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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ONTARIO AUTOMOBILE INSURANCE BOARD ACT

WEDNESDAY, FEBRUARY 3, 1988

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Furlong, Allan W. (Durham Centre L) for Mr. Chiarelli

Runciman, Robert W. (Leeds-Grenville PC) for Mr. Sterling

Swart, Mel (Welland-Thorold NDP) for Mr. Farnan

Clerk: Mellor, Lynn

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Revell, Donald L., Legislative Counsel

Witness:

From the Ministry of Financial Institutions:

Nixon, J. Bradford, Parliamentary Assistant to the Minister of Financial
Institutions (York Mills L)



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 3, 1988

The committee met at 10:16 a.m. in committee room 1.

ONTARIO AUTOMOBILE INSURANCE BOARD ACT
(continued)

Consideration of Bill 2, An Act to establish the Ontario Automobile Insurance Board and to provide for the Review of Automobile Insurance Rates.

Section 24:

Mr. Chairman: Committee members, you have before you, as distributed by the clerk, a new section 24. It does not have a date on it, nor does it have a number on it, so you will be able to distinguish it by that. Yesterday, before we adjourned, we were talking about dealing with section 24 so that we could get back to the other ones that had been stood down and deal with those. If that is still the unanimous consideration of the committee, we will proceed that way.

Perhaps Mr. Nixon, just to assist us, could tell us what the difference is between the section 24 that is numbered and dated and the section 24 that has been handed to us. In the absence of Ms. Hart, perhaps Mr. Kanter would move the motion. That is a long one. I do not imagine we could dispense with reading. Mr. Nixon, would you like to tell us just what the difference is between the two?

Mr. J. B. Nixon: The basic rationale behind section 24 is that the Facility Association shall have its rates reviewed and approved by the board. In subsection 24(1), we had originally said that the Facility Association shall not promulgate any rate under the plan of operation that has not been set or approved by the board.

The change is that the Facility Association shall not promulgate any rate, and here is the change, "in respect of contracts of automobile insurance provided"--those are the new words--"under the plan of operation."

In subsection 24(3), we originally said, "The board on its own motion may, and at the request of the minister shall, review the plan of operation" of the Facility Association and its basic intent.

The new amendment is, "The board of its own motion may, and at the request of the minister shall, review," the new words being, "rates in respect of contracts of automobile insurance provided under," and then "the plan of operation."

The problem with the original amendment was that it suggested the entire plan of operation was to be reviewed by the board. The plan of operation sets the corporate bylaws and rules governing the conduct and decision-making of the Facility Association and there is no need to review all of that. All we want to review are the rates in respect of contracts of automobile insurance provided by the Facility Association. That is explanation for the last-minute amendment.

Mr. Chairman: This is the new section 24, Ms. Hart, that was put before you. It does not have a date or a number on it. If you would move it, and then if there any questions about Mr. Nixon's explanation, they can be included in the questions of members in general.

Ms. Hart moves that section 24 of the bill be struck out and the following substituted therefor:

"24(1) Subject to subsection 12 but despite any other provision of this act or the regulations, the Facility Association shall not promulgate any rate in respect of contracts of automobile insurance provided under the plan of operation under the Compulsory Automobile Insurance Act that has not been set or approved by the board under this section.

"(2) The Facility Association shall apply to the board for approval of rates prepared by it under section 10 of the Compulsory Automobile Insurance Act.

"(3) The board of its own motion may, and at the request of the minister shall, review rates in respect of contracts of automobile insurance provided under the plan of operation under the Compulsory Automobile Insurance Act and, following a hearing, may set rates that it considers to be just and reasonable and not excessive or inadequate in respect of such contracts.

"(4) Where a rate or range of rates is set under section 20 for a class of risk exposure, all rates in respect of that class promulgated by the Facility Association before the coming into force of this section or set under subsection (3) shall be deemed to be revoked on the day the rate of range of rates takes effect.

"(5) Where a rate will be revoked under subsection (2) or an approval will be revoked under subsection 20(13), the Facility Association, within 30 days of an order being made under section 20 setting a rate or range of rates, shall prepare and apply to the board for approval to promulgate a rate that,

"(a) is the rate set under section 20 or is a rate within the range of rates set under that section; or

"(b) is not a rate to which clause (a) applies.

"(6) The Facility Association may at any time apply to the board for the variation of any rate previously promulgated by it.

"(7) Subsections 22(3) to (12) apply with necessary modifications to the approval of a rate to which clause (5)(a) applies.

"(8) Where an application is made under this section and subsections 22(3) to (12) do not apply to the application,

"(a) the Facility Association must demonstrate that the proposed rate is just and reasonable and not excessive or inadequate;

"(b) the Board may approve, reject or vary the proposed rate.

"(9) Despite subsection 20(13), if the Facility Association makes an application under clause (5)(b) or applies to vary a rate approved in an application under clause (5)(a) so that the rate will no longer be the rate

set under section 20 or within the range of rates set under that section, the rates for the class of risk exposure to which the application relates that were in effect under the plan of operation immediately before the application continue in effect until the board makes its decision.

"(10) Where the Facility Association makes an application described in subsection (8) and the board approves a rate that is less than the rate continued in effect under subsection (9), the board's approval may be made retroactive to the date the application was filed with the board or such later date as the board may determine and, if the order is retroactive, an insurer shall reimburse its policyholders for any excess of premiums.

"(11) The Facility Association shall promulgate rates set or approved under this section forthwith after they are approved or set.

"(12) Subject to subsection (4), rates promulgated by the Facility Association under section 10 of the Compulsory Automobile Insurance Act before the coming into force of the section continue in force until they are varied in accordance with this section."

Mr. Swart: If we can have the assurance of the parliamentary assistant that there are no changes in this except the ones he stated, I am willing to accept that. I think all of us here understand that we cannot possibly, unless we adjourn, do all the cross-referencing that is in this amendment or even cross-check it with the original one in the moment we have. However, if we can have that assurance, I will accept that. I did check the other one thoroughly.

Mr. J. B. Nixon: I can give you that assurance. I just point out there are two very minor changes, one to subsection 24(1) reads "subject to subsection 12" as opposed to "subject to subsection 13." I did not point that out. It is a drafting change.

Also, legislative counsel has pointed out that subsection 24(5) should read:

"Where a rate will be revoked under subsection 4," rather than "subsection 2." That is just the cross-referencing effort, but I can give you the assurance that there are no other changes.

Mr. Chairman: Just one clarification. Subsection 24(1) which referred to section 12 as read by Ms. Hart is correct?

Mr. J. B. Nixon: Yes.

Mr. Swart: I might add that, in my view, this is an extremely important section. I do not think there is any doubt that the rate review board is doing its job. This section is going to be used very, very extensively. It will become similar to what it is in many jurisdictions in the United States where young males now are all going to the Facility. I am not suggesting that there is any disadvantage in that to the driver, but they happen to get most of it from the Facility because the insurance companies on those bad lists, if they cannot charge extra rates, just do not want to insure them. That is understandable. It does not matter what legislation you have; they are still not going to insure them and those people are going to go to the Facility, so the Facility becomes a very important matter once you go away from the pure risk categories.

Mr. Chairman: Thank you Mr. Swart. Mr. Nixon had a comment.

Mr. J. B. Nixon: My only comment is that prudence would suggest that one not predict the extent to which the Facility will be utilized because your definition of pure risk categories are not ours and are not the insurance industry's. Who knows? We expect that if the board sets fair and adequate rates, the Facility Association will not be utilized any more than it is at the present.

Mr. Swart: I was not referring to what the insurance companies term the pure risk. It is not my interpretation.

Mr. Chairman: Any further comments or are we ready to proceed?

Shall section 24 as moved by Ms. Hart carry?

All those in favour? All those opposed? Carried.

Section 24, as amended, agreed to.

Mr. Chairman: We can now go back, with the consent of the committee, to the items we postponed.

Mr. Swart: I wonder whether it might be appropriate for me to move my amendment to section 24?

Mr. Chairman: Mr. Swart moves that the following section be added to the bill, 24a:

"(1) The Facility Association shall establish a fund called the 'consumers groups fund' to be used for the purpose of funding groups representing the interests of consumers in hearings before the board.

"(2) The Facility Association will require insurers to contribute to the consumer groups fund in such amounts and at such times as the Facility Association shall determine.

"(3) The Facility Association shall make payments out of the consumer groups fund to such persons in such amounts and at such times as the board by order directs.

"(4) Where at any time the consumer groups fund is insufficient to pay any amount ordered to be paid out of it, the Facility Association shall forthwith require insurers to pay the difference into the fund.

"(5) Insurers shall forthwith pay through the Facility Association any amounts requested by the Facility Association for the purpose of this section.

Mr. Swart: I would point out that this section, along with our amendment to section 12, provides a system of funding those groups that may be interveners at the hearings of the rate review board.

Mr. Chairman and members of this committee, this is deliberately designed to circumvent a prohibition, which, as you are all aware, is applied against opposition parties in moving money amendments. If you established a fund that is paid out by the government, it could be ruled out of order. However, I suggest it is a very appropriate way of funding the consumer groups and other groups that will want to appear at the board hearings.

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I want to say that the hearings really become almost meaningless unless you have some form of comparable advocacy on both sides at these hearings. They are almost meaningless. I have been involved in a number of these, as I said yesterday, and the disparity between the companies promoting increases and those that are trying to defend are so apparent and obvious that it does make the hearings almost a farce.

I would like to give one example. I have appeared on numerous occasions before the Ontario Energy Board on the application of Consumers Gas to increase its rates. At those hearings, a situation exists, a terrible imbalance that I have spoken about, and I would like to indicate the kinds of imbalances that there were at a hearing on Consumers Gas.

The following officials of Consumers Gas gave evidence: a director; a manager; director of budgets and forecast; director of financial and economic studies; director, customer and general accounting; manager, gas supply; director, operations and engineering; director, financial accounting and statistics; director of marketing; manager, economic studies; general manager; treasurer; director; senior vice-president; manager; vice-president; manager; another senior vice-president and an executive vice-president. If we add those all up, there was a total of 21 there. In addition, there were two lawyers there for the whole period of time these were going on.

Opposing their proposed increases, and most of these were only opposing a certain section of those increases, were Peter Atkinson for Consumers, Peter Thompson for the Industrial Gas Users Association, Julia Ryan for Cyanamid Canada Inc., Catharine McLeod for Consumers Fight Back, Aubrey Butler for Union Gas, Stephen Kawalec for Urban Development Institute apartment group, James Murray for TransCanada PipeLines Ltd. and myself for the Ontario New Democratic Party.

That was a total of 12 on this side. Of those 12, no one was there for as much as half of the hearings. Most of them were only there for one afternoon or one day. Of all of those groups that appeared, none of them had any money to go into an in-depth examination of the books of Consumers Gas to determine whether it needed those increases.

I want to point out that the advocacy group for the consumers was so weak that when they brought down the ruling, which was the first victory--it was a so-called victory--which I have attended where I made a presentation in which they did exactly as we requested and allowed no increase in Consumers Gas rates there, they gave me a very substantial part of the credit. I had very little research I could do on it. Nevertheless, in their report, which they released and in which they gave their ruling, as I say, they gave me a very substantial part of the credit for that. They asked for that and quoted me throughout the ruling quite extensively.

What a sham that, on my evidence, when I had no opportunity to go into any depth and had practically no research done on it, they nevertheless made the decision based on that. It shows you what perhaps could have been done if one had had a real advocate there for the consumers, real in the sense that they had the financial resources to have done the in-depth job.

In the case of Consumers Gas, when I say we had a victory, it did not get any increase, but still at that time it was awarded a 15 per cent return

on equity. Consumers Gas has never got less than 12 per cent return on equity in the last 15 years. At a time when we were in a tremendous depression and many companies that were in the competitive field in this province were not making any money--some of them went broke--it still got its 15 per cent return. That shows how effective a rate control board is, if you do not have full advocacy.

I want to point out to you that in the United States, where they do have rate review boards, as ineffective as they may be, they do have advocacy groups. They have in all of those states--I should not really make the statement that they all have insurance rate review boards because I am not sure if all the states have them, but the ones that have been mentioned here all have public advocates. Those public advocates are funded by the utilities and the other groups that ask for rate increases. They are funded to an extent equal to what those who are promoting the increases have to spend. If there is any seriousness at all about having an effective rate review board--and because of the system, it is not going to do any good in reducing rates--you are going to have to have that kind of public funding for the advocacy groups which are going to represent the drivers of this province.

I have been concerned over many years and have introduced, as Mr. Keyes will probably know, a bill in the Legislature for a public advocate in Ontario similar to what they now have in most of the states in the United States. I have tried to keep up with what is taking place down there. Every year I get the report of the public advocate in the state of New Jersey, which was the first state and which has the most comprehensive public advocate's system. They deal with auto insurance down there.

In fact, it is quite revealing that over the years they have been in operation--and they started in 1975--the requests that have been made for increases by all of the utilities there would indicate that they have--I want to find this rather quickly. Perhaps I can just take the 1985 year because it is indicative. The amount that was requested--this is all of the rate reviews--was \$4,648,000,000 and they allowed \$565 million in the public advocacy. They have people there somewhat like our Ombudsman here but who deal with consumer matters. It deals with much more than consumer matters down there but it deals extensively with consumer matters.

Perhaps I just should read the section on auto insurance in the report:

"Comprehensive efforts during the year were aimed at lower and fairer auto insurance premiums and a rate system based on a driver's ability rather than arbitrary classification statistics.

"More than half a million drivers who picked two new auto insurance options gained refunds up to \$31.50 per car as a result of an agreement worked out with the insurance department and companies insuring more than 80 per cent of the state's motorists. Insureds also will benefit from some \$6.5 million in premium reductions stemming from the accord, which provides premium breaks for motorists who select higher tort threshold and personal injury protection reimbursement options.

"The division also sought to hook up more drivers with accident and violation-free driving records with companies willing to insure 'clean risk' drivers. A bid by the Joint Underwriting Association to have a \$150 insurance surcharge imposed on all motorists was vigorously opposed by the division, which also was prepared to file an amicus brief supporting the cash flow accounting system used to determine actual JUA losses but being challenged in court by the association.

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"An appellate division ruling which upheld the insurance commissioner's authority to eliminate the discriminatory insurance classification system based on age, sex and marital status was seen as a step forward in the advocate's long campaign to abolish a system which has no correlation with a driver's record or ability.

"By the end of the year, the insurance department had moved to comply with a division recommendation that filings stemming from insurer classification and territorial systems, together with insurance forms, be made more understandable.

"A settlement with the Automobile Insurance Plan Services Office reduced a rate increase for assigned-risk commercial vehicles from 59 per cent to 17.1 per cent. Another settlement with the Keystone Insurance Co. pared a rate increase from 21.5 per cent to 9.9 per cent."

That may not sound like an awful lot, but what this demonstrates is that they have there an advocate, an independent advocate whose job is to protect the motorist as far as the insurance rates go, and he is funded by the insurance companies. It is not a direct funding, I know, but all those who have private rates must pay in and the money comes out of that to pay for the advocate to protect them.

Surely if the insurance companies in their applications for rate increases are going to be spending \$500,000 or \$1 million or \$2 million to promote their increases, which is going to come out of premiums, why should the motorists not have the same right to have that kind of money spent on their behalf? It makes a lot of sense if we are going to have fairness in the system.

We are not proposing the public advocate system in the resolution, of course, but we are proposing a system where at least a rate review board can decide ahead of time on those groups, if any, which should be funded to battle for the consumers at those hearings. I suggest to you that is reasonable. I suggest to you anything other than that is grossly unfair to the motorists of this province. That is the purpose of our amendment 24a and, as I say, the other amendment of 12(1)(ba) and (bb).

I rest that case. I suggest that is fundamentally correct if we believe in fairness in this system.

Mr. Runciman: I guess I have some sympathy with what Mr. Swart is saying, but I think a number of things we have seen occur during this whole process put you on guard. I recall one group that appeared before this committee that purported to be representing consumers. Upon questioning by myself and I think Mr. Keyes, we found out that the gentleman was virtually representing himself and was a member of the New Democratic Party.

Mr. Cureatz: He was a plant witness.

Mr. Runciman: A plant, if you will, yes.

Mr. Swart: I remember a plant from Manitoba. That did not turn out too well either.

Mr. Cureatz: They cancelled each other.

Mr. Runciman: At least we knew where he was coming from. He did not pretend to be representing consumers, which this gentleman tried to pull on the committee.

I think the potential for abuse in this kind of situation is significant. I think if these groups or individuals are truly representative of consumers and consumer concerns, there other means and methods of raising funds available to them.

I can look at the coalition of groups and individuals who are preparing to fight the government's initiatives in respect to Sunday shopping. I saw a story in the paper yesterday that in a couple of weeks they have raised over \$100,000. Obviously, there is great concern out there within society about that initiative of the government.

Mr. Cureatz: Let us talk about that one.

Mr. Runciman: Yes, we can get into it. We will be talking a lot about that one next week.

To me, what we have in many instances with this kind of situation is that, if you are going to open the vault, we are going to have all kinds of opportunities for organizations whose goals and objectives are, in my view, less than honourable. We know what the ultimate objective of the NDP party is. They have spelled it out on numerous occasions, and that is to have a government-run program.

Mr. Swart: Just to set you straight, we are not the NDP party. It is the New Democratic Party. It is not the New Democratic Party party.

Mr. Runciman: You folks are not like John Turner. You do not like a good party.

Mr. Swart: Yes, I do. That is why I am in it.

Mr. Runciman: This is a tactic of Mr. Swart. He continually tries to interrupt me to get me off track--

Mr. Cureatz: Where is the chairman?

Mr. Runciman: --and he has a degree of success; there is no doubt about it. I have to pause and collect my thoughts again.

In any event, we know what the ultimate objective of the party is and that is to end up with a government-run program. You just read the wording of his amendment. He wants all of these funds to come out of the hides of the insurance companies in the province and it is simply another nail in the coffin of the private sector, something else that adds to the unattractiveness of the Ontario environment as a place where these companies want to operate. I think they are going to have enough difficulty in respect to this rate-setting board without pounding another nail in.

When our former leader made proposals in respect to auto insurance--

Mr. Swart: Which one?

Interjections.

Mr. Runciman: That can get confusing. I appreciate that. Mr. Grossman.

Mr. Keyes: Oh. That one.

Mr. Chairman: Let us try to control our passion. I am wondering how all this is going to show up in Hansard. Will it be "Ha, ha, ha"?

Interjection: "Some honourable members."

Mr. Runciman: As long as it does not show "Mr. Cureatz."

Mr. Cureatz: I am just trying to clarify in my own mind.

Mr. Runciman: When Mr. Grossman made our position--I think it was in a speech in London--he mentioned the rate review board, not the rate-setting board. He also went into some detail about the concept of an insurance ombudsman. Mr. Swart touched on that and we feel that, obviously, that would have been a much better avenue to pursue than the one the government has taken. They have gone down a road which has not enthused the NDP, obviously, to the degree they would like to be enthused, but we can see by their support for a number of aspects of this bill, their amendments to promote further incursion in the private sector, that they are not too darned unhappy with the way the government is going. They see it as an obvious step in the direction they want to see taken.

I just wanted to put our views in respect to this amendment on the record.

Mr. J. B. Nixon: I see a number of problems with the specific amendment and then with the concept. With the specific amendment Mr. Swart is proposing, there are procedural problems which arise.

One, when there is an individual insurance company application before the board, why would you have all insurance companies fund an objector? It does not seem fair at all. It seems quite inequitable.

Second, you may or may not be aware that the role of counsel at the Ontario Energy Board is to bring forward witnesses and evidence to challenge any proposal there. In fact, that is why they are funded and they do do that.

Third, there are groups existing in this province receiving government funds which do argue the public interest or the consumer's interest before various boards. I can think of the Ontario Public Interest Research Group, OPIRG.

Fourth, your proposal establishes no criteria for cost awards or, as Mr. Runciman suggests, who should be determined to be entitled to costs. Who represents the consumer? Should it be you, Mr. Swart? Should it be Mr. Hampton, myself or some group that is an unincorporated association? I do not know.

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Finally, if the minister was here, I know he would say it would strike him as very odd indeed that the people who are coming before the board seeking the rate increase should be obliged to fund the opposition. They are already

dealing with the first step of the board and its opposition to a rate increase in the public interest. Why should they have to go a step further, not only to fund their own litigation but to fund the opposition to it? It strikes him as basically unfair and inequitable that they should have to do that.

In any event, in the 1986 throne speech, the government committed to study some form of intervener funding. I can tell you that study is ongoing and we are still considering the matter. But it is inappropriate in this case to deal with it in this bill on an ad hoc basis, which does not develop a government-wide policy at all and is deeply flawed, as I suggest.

Mr. Chairman: Mr. Swart, I am obviously going to have to rule on this. I know that at the outset you indicated your reasons for why it might be in order, because it does not require the expenditure of public funds. But the amendment really deals with the establishment of a fund to be administered by the Facility Association. The bill itself is to establish the automobile insurance board and to provide for the review of automobile insurance rates. The Facility, of course, is governed by the Compulsory Automobile Insurance Act.

The amendment, I am therefore ruling, proposes to expand the responsibility of the Facility Association, which is beyond the scope of this bill. Since it is not being addressed in the bill, I have to rule the amendment out of order. I appreciate your comments about it and statements have been made by other members, but I think with reference to this, I have to rule that your amendment is out of order.

Mr. Swart: Mr. Chairman--

Mr. Chairman: I think what you have to do is challenge the chair.

Mr. Swart: In the House, if something is ruled out of order, one person is given the opportunity to reply to that.

Mr. Chairman: I do not think that is the case. In the House, in fact, if the Speaker makes a ruling, it is nondebatable. You can appeal the Speaker's order by a challenge of the chair.

Mr. Swart: I will have to challenge the chair then on this one.

Mr. Chairman: All right. The question is whether the chair should be upheld in its ruling.

Mr. Swart: I believe I can speak to that. It is permitted in the House.

Mr. Chairman: I do not think you can. It is a nondebatable motion. You can make the motion and that is the only way you can do it, by challenging the chair.

I am going to call the question and the question is: Shall the ruling be sustained?

Those in favour of sustaining the ruling? Those opposed?

The ruling is sustained.

We move back to section 12.

Section 12:

Mr. Swart: It is redundant now.

Mr. Chairman: Your amendment, that is. We will deal with the matter of section 12.

Shall section 12 in its entirety, in the light of there being no amendments to it, carry?

Those in favour? Those opposed? Carried.

Section 12 agreed to.

Section 20:

Mr. Chairman: I am advised that the next item is section 20. There is an amendment to subsection 20(13), so perhaps we can deal with section 20. Shall section 20, subsections 1 through 12, carry? Those in favour? Those opposed? Carried.

There is an amendment by the government. Perhaps, Ms. Hart, you will move that amendment.

Ms. Hart moves that the following subsection be added to section 20 of the bill:

"(13) If the board under subsection 2 establishes a new rate or range of rates, all approvals of rates previously given under sections 22, 23 and 24 for that class of risk exposure shall be deemed to be revoked on the day the new rate or ranges of rates takes effect."

Mr. Chairman: Do members wish to speak to that amendment?

Mr. Swart: I understand the motion, but I really would like somebody to explain the explanation. It is more convoluted, and the amendment is pretty straightforward.

Mr. Chairman: Would you like Mr. Nixon to address that?

Mr. J. B. Nixon: The amendment was added--

Mr. Swart: I am being facetious. Never mind. I know what the motion means. But the explanation this morning was more convoluted than the motion.

Mr. Chairman: Are there any further comments by members of the committee? Are we ready to vote then?

Shall the amendment to subsection 20(13) put by Ms. Hart carry?

Those in favour? Those opposed? Carried.

Motion agreed to.

There is a further government amendment to section 20. It is page 14 of your binder.

Mr. Cureatz: Couldn't you guys get it right the first time?

Mr. Keyes: That is sober second thought.

Mr. Chairman: Perhaps Ms. Hart would care to move that amendment.

Mr. Cureatz: Our guys, when they were running the show, always had it right the first time.

Interjections.

Mr. Chairman: Ms. Hart moves that the following subsections be added to section 20 of the bill:

"(14) Subsection 2 is repealed on a day to be named by proclamation of the Lieutenant Governor and the following substituted therefor:

"(1a) The board may hold industry-wide hearings for the purpose of reviewing either or both the classes of risk exposure for different categories of automobile insurance and the rates or ranges of rates set by it.

"(2) Following an industry-wide hearing at which a rate or range of rates set by it is considered, the board may vary the rate or range of rates and where classes of risk exposure are considered, it may vary the classes."

"(5a) An insurer may apply to the board for changes in the classes of risk exposure, and where the board, in its absolute discretion, is of the opinion that it would be in the public interest to consider the proposed changes, the board shall hold an industry-wide hearing to review the proposed changes in the classes of risk exposure and the rates or ranges of rates with respect to the changes in the classes of risk exposure."

"(15) An industry-wide hearing commenced before the date named in the proclamation under subsection 14 shall be completed and the board may make orders following the hearing as if this section had not been amended by that subsection."

Mr. Chairman: Any comments by Mr. Swart?

Mr. Swart: I would like to move an amendment to this amendment to the bill. You will recall the other day that I did win one amendment. It was to delete the reference to subsection 24(2). It is the only thing we have won, but we did delete 2. Here I would like to add three words in subsection 5a.

Mr. Chairman: Mr. Swart moves that the amendment to subsection 20(14) be amended by adding the words "or any person" in subsection 5a after the words "an insurer."

Mr. Swart: The subsection would read, "An insurer or any person may apply to the board for changes in the classes of risk exposure, and where the board, in its absolute discretion," etc.

I think it is perfectly obvious why I am moving this. This again, of course, is a clear indication of the pro insurance company bias of this bill, where it permits only an insurer to make application for a change in classes of risk exposure. It seems reasonable that if an insurance company can make an application for a change, perhaps some group like the Consumers' Association of Canada or some of the various trucking organizations or various groups ought also to be able to ask that there be a change in classification, if they think that classification is unfair.

I want to point out to members of this committee that already in this amendment is the power to the board to make any decision on whether it proceeds at its absolute discretion, so it is not going to proceed with frivolous applications. This would provide at least a further small measure of fairness.

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Ms. Hart: I have a difficulty with Mr. Swart's amendment. I may be misperceiving it. As I understand it, the purpose of this board is to set the classifications and rates or ranges of rates that the insurance companies will write. If you do not have an insurance company that will write on the basis of a classification or on the basis of that rate, then it is a futile exercise. If my logic is correct, then a consumers' group or a truckers' group is going to have to go to an insurance company anyway and persuade that company to write that class of risk under that premium in order for it not to be a futile exercise. If you have to do that, then it does not make any difference that it is the insurer making the application.

Mr. Chairman: Mr. Hampton, before you ask a question, perhaps we can find out whether the question is necessary by asking Mr. Nixon to comment. Then I will allow you to ask a question.

Mr. Hampton: I really want to emphasize a different side of what Mr. Swart is saying.

Mr. Chairman: All right. I thought it would be in a similar vein. Fair enough.

Mr. Hampton: I think, for greater clarification, the comments Mr. Swart and Ms. Hart made deserve to be examined. What Mr. Swart is saying is that there has to be a mechanism for consumers to ask that the board look at classes of risk exposure and rates. There has to be a way that they can initiate the mechanism.

Ms. Hart's argument seems to be that even if consumers got before the board and persuaded the board that rates are too high or that there is something wrong with the classes of risk exposure and these things ought to be changed or that the range of rates ought to be changed, after the board made that decision consumers would still have to go find an insurance company that would write those rates. If that is the case, if that is where we are really going with this, then why do we have a rate review board to begin with?

If that happens, that is going to indicate there is something seriously wrong with the whole mechanism and the government will have to deal with that at a later date. The fact that at some later date there might be something potentially very wrong with this whole rate review mechanism is no reason at all for foreclosing to consumers the capacity to initiate proceedings before this board. It may happen at some later date that the rate review board will set rates that no insurance company in Ontario will write. Mr. Swart and I agree that very likely may happen down the road, and I think Conservative members of this committee also agree that might happen down the road.

That will simply illustrate how incredibly flawed this whole process probably is. But the fact that potentially may happen somewhere down the road is no reason to foreclose from a consumer group, a trucking group or someone else who may have a consumer interest in insurance rates the possibility or

the capacity to institute proceedings before the board. I emphasize again what Mr. Swart says. There is something fundamentally wrong when it is only the insurer who may apply to the board for changes in the class of risk exposure. There is something very wrong with that if those are the only people who can initiate proceedings.

Mr. J. B. Nixon: I think that you are under a bit of a misunderstanding as to what subsection 20(5a) does and does not do. Let me try to explain what subsection 20(5a) does and a bit about the classification system. The classification system will be established by the government, but then responsibility for changes to the classification system will be given over to the board. The board, by its own motion, may begin changes or order changes in the classification system and make that determination.

The intention behind subsection 20(5a) is that as insurance companies are in the business of providing the product, they may perceive that they can create a classification system or a class whereby they can offer a better rate to the consumer. The board may say, "Well, it appears to be in the public interest and therefore we will have a hearing on the matter." But I think Ms. Hart hits on a very important point. Consumers could create all the classifications in the world they want, the public could, or a special interest group could, but if the market is not going to fill that classification, it is a Pyrrhic victory at best and at worst is a waste of the consumer's time, energy and money.

This deals with changes in the classification system. That is the purpose behind it.

Mr. Swart: I want to say that is about the weakest argument I have heard from the parliamentary assistant and that says something, because most of them are pretty weak.

What he said is that insurance companies could offer another class which they may deem is advisable. I do not object to that, but surely there may be a trucking group or some other groups which feel that, because of their experience over two or three years, they should be in a separate class by themselves.

You want to deprive them of the right to make an application to the board for a new classification or change in classification. It is ridiculous to talk about all kinds of money and all the rest of that sort of thing. The board in its absolute discretion can go ahead if it thinks it is in the public interest or can turn it down if it is a frivolous thing and not reasonable. Surely these groups ought to have that right to make application for a change in classification.

The classification is the guts of this bill. The review board is not going to do anything for people, but we are dealing with classifications and I think this will improve the classification system. Surely somebody besides the insurers or even the board on its own initiative ought to be able to make application for a change in classification. I suggest that is reasonable. It makes all kinds of sense. I do not see how anybody could object to that kind of proposal.

Mr. J. B. Nixon: Once again, Mr. Swart, I think you are missing the point. The point is that whether the board or an insurer applies to the board for a change in the classification system, if the board decides to hear the

insurer's application or if the board decides to make changes in the classification system, what immediately follows is a public, industry-wide hearing. What follows from that is--that long section, you remember, that we amended--that any person is entitled to appear as a party. The board has the power when it is determining the classification system, as you will see in later provisions of the bill, to set new classification systems, to recognize risk management programs for purposes of special classifications and so on and so forth.

Any individual or recognized group has a right to be a party at the hearing, to stand and be heard, to make argument on the issue. Indeed, the board has the discretion to hear their proposals for change because I am sure they will be making proposals for change to the proposal made by the board or the insurance company. They are not excluded. They have a right to appear there as a party, and for some reason you wilfully want to ignore that. The right to appear as a party is a very important right. The obligation of the board to hold industry-wide hearings and give public notice is a very important requirement.

Given all those procedural protections, I suggest to you that you are setting up a straw man.

Interjections.

Mr. Chairman: Just before you do that, Mr. Swart, perhaps you could give us that amendment in writing because I intend, after you have had this further comment, to move the matter.

Mr. Swart: I do want to answer that, because that argument is even weaker than the other one. I know all that. They can come before a hearing. But say there is a change in classification which is desired. Let us take the dump truck operators, for instance. If they want a change in classification, that never gets to the board; they cannot even apply to the board for it. Sure, we will want a classification generally that is in their interests. They are opposing the abolition generally of sex and marital status because they do not think that is in their interests. They will propose something that is in their interests; the board may or may not propose it. Certainly, if they do not know about it, they may not propose it.

What is wrong with having a group being able to make application for a change in classification? The answer by Mr. Nixon does not deal with that. Sure, if the board makes a proposal, they can appear before it and they can be interveners. Of course, they may miss it because we did not set up a registry system, and they will not have any funding. They may appear before it in spite of those things. But they will never be before the board if they cannot make application; that is the point I am making. Something they want desperately, the change of application, will not even get before the board because the legislation does not give them that opportunity.

Mr. Chairman: If it is on the same point, Mr. Hampton, I do not want to cut you off, but we have had significant debate on this issue.

Mr. Hampton: Just very briefly.

Mr. Chairman: Very briefly.

Mr. Hampton: Yes. It seems to me what Mr. Swart is getting at is the capacity of someone other than an insurer and the board to initiate proceedings. What the parliamentary assistant is saying is not answering that question at all. He is saying that once proceedings are initiated by the board or the insurer, a consumer group will have standing. It seems to me arguments about standing do not deal with this question at all, as to who should have the right to initiate proceedings.

Mr. Runciman: Could you read the amendment?

Mr. Chairman: Yes, I have it here. The amendment is Mr. Swart's and we have it here in writing.

Mr. Swart moves that subsection 20(5a) be amended by inserting the words "or any person" immediately after the words "an insurer" in the first line.

Ms. Poole: Might I make a motion that this be stood down for approximately five minutes, if we could take a break to discuss this?

Mr. Chairman: It is about time for me. I am either going to suck my thumb or have a cigarette.

Ms. Poole: Mr. Chairman, this is actually in your benefit.

Interjections.

Mr. Chairman: I know I should not have said anything. Before we do that, Mr. Runciman has a comment.

Mr. Runciman: Just 30 seconds so you can throw this into your mix of consideration. I am not enthused about supporting anything in respect to this bill, but I cannot see any problem with what Mr. Swart is proposing here, because the board still has the ultimate say, if you will, and if they consider the application to be frivolous, they do not have to deal with it. I am going to have to support Mr. Swart's amendment.

Mr. Chairman: OK. We stand adjourned until 11:25.

The committee recessed at 11:13 a.m.

1130

Mr. Chairman: Mr. Swart, I understand that your amendment has been properly drafted by counsel, so would you like to ask for unanimous consent to withdraw it as you put it, so it gets into the proper legalese?

Mr. Swart: That is exactly what I was going to do. You put the words in my mouth.

Mr. Chairman: It is the first time we have been able to do that.

Mr. Swart: That is right. I did not even choke on them. It shows how easy it is to come around to my way of thinking and talk the same language.

I would like to have unanimous consent to withdraw my amendment to Ms. Hart's motion on subsection 20(5a).

Mr. Chairman: Is there unanimous consent?

Mr. Cureatz: Can we debate that?

Mr. Chairman: Do I detect that there is unanimous consent?

Mr. Cureatz: Yes.

Agreed to.

Mr. Chairman: Mr. Swart moves that subsection 20(5a) of the bill as set out in Ms. Hart's motion be amended by striking out "An insurer" in the first line and inserting in lieu thereof "Any person."

Is there any further discussion on that amendment? Those in favour? Anyone opposed? Going once, twice, three times. Carried.

I understand that legislative counsel has a public announcement for us.

Mr. Revell: Or a confession, as the case may be.

Mr. Chairman: It is a mea culpa, I understand.

Mr. Revell: In preparing the motion that Ms. Hart has moved, between subsection 20(2) and subsection 20(5a), there should have been a line that read "and on that day the following subsection is added to this section." So what happens is that the present subsection 20(2) of the bill as printed would come out on some future day, subsection 20(1a) and subsection 20(2) would go in in replacement of the existing subsection 20(2) and then this subsection 20(5a) is the further elaboration dealing with these applications by any person to the board. I think all we need is unanimous consent just to insert that and then it would be part of the main motion.

Mr. Chairman: Is that understood by all, before I ask for unanimous consent? Do we have unanimous consent that that take place? I will read that as unanimous consent.

Agreed to.

The question is now on the amendment as amended. Those in favour? Those opposed? Carried.

Section 20, as amended, agreed to.

Section 21:

Mr. Chairman: Subsection 21(2). Just by way of explanation, I understand that if you wish to have this struck, you vote in favour of it; if you do not wish to have it struck, you vote against it.

Clerk of the Committee: No.

Mr. Chairman: Is that wrong? The chairman has it wrong.

Clerk of the Committee: If you want to have subsection 21(2), when the chairman puts the question on subsection 21(2) you would vote against the subsection; if you want to uphold subsection 21(2), you vote in favour of the section.

Mr. Swart: What you are saying is that we do not deal with this resolution. You call the section, for or against. Is that right?

Clerk of the Committee: Right.

Mr. Swart: You cannot have an amendment which is opposite to the section of the bill.

Mr. J. B. Nixon: Just by way of explanation, the government is moving the deletion of subsection 21(2), which would suggest that people vote against it.

Mr. Chairman: Mr. Nixon has comments on it.

Mr. J. B. Nixon: Yes. Just by way of explanation, the government is moving the deletion of subsection 21(2), which would suggest that people vote against it, as it is replaced by subsection 20(13), which we have already passed.

Mr. Chairman: Mr. Nixon moves that subsection 21(2) be deleted from the bill.

Are there any further comments on the matter?

Motion agreed to.

Section 21, as amended, agreed to.

Section 22 agreed to.

Section 23:

Mr. Chairman: There is an amendment to subsection 23(2), so we can deal with subsection 23(1).

Shall subsection 23(1) carry? Those in favour? Those opposed? Carried.

There is a government amendment to subsection 23(2).

Ms. Hart moves that subsection 23(2) of the bill be struck out and the following substituted therefor:

"(2) Except as provided in subsections (2a) and (2c), the board shall hold a hearing with respect to applications under subsection (1).

"(2a) Where all of the rates included in an application under subsection (1) are below the rates or ranges of rates set under section 20, the application shall be deemed to have been approved by the board 30 days after its filing, unless the board within that 30-day period advises the applicant orally or otherwise that it has not approved the application because the board is of the opinion that,

"(a) it is in the public interest to hold a hearing on the application;
or

"(b) the board does not have sufficient information upon which to make a decision concerning the application.

"(2b) Where the board advises an applicant orally that it has not approved an application referred to in subsection (2a), it shall forthwith mail a written notice to the insurer confirming that fact.

"(2c) Where the board advises an applicant that it has not approved an application referred to in subsection (2a) because of insufficient information, the board in its discretion may permit the insurer to file additional information within a specified period and it may extend the 30-day period accordingly.

"(2d) Following a hearing required by this section, the board may approve the application or it may reject or vary the proposed rate and the rate so varied shall be deemed to be a rate approved under this section.

"(2e) The board may waive public notice with respect to a hearing under this section."

Do any members wish to comment on the amendment?

Shall subsection 23(2), as proposed by Ms. Hart, carry? Those in favour? Those opposed? Carried.

Subsection 23(3) has no amendments. Shall subsection 23(3) carry? Those in favour? Those opposed? Carried.

There is a government amendment to subsection 23(4).

1140

Ms. Hart moves that subsection 23(4) of the bill be amended by replacing by replacing "21(2)" in the first line with "20(13)."

Any members wish to comment? Shall subsection 23(4) carry? Those in favour? Those opposed? Carried.

There is a government amendment to subsection 23(5).

Ms. Hart moves that subsection 23(5) of the bill be amended by striking out "it shall provide for the reimbursement of" in the second-last line and inserting in lieu thereof "the insurer shall reimburse its".

Any comments on that amendment? Shall subsection 23(5), as amended, carry? Those in favour? Those opposed? Carried.

There is a New Democratic Party amendment to section 23.

Mr. Swart: I have a motion to add subsections to section 23. I am not sure whether these numbers are right now, are they? If they are not, then they have to be changed. That is only a minor matter if they do.

Mr. Chairman: Mr. Swart moves that the following subsections be added to section 23 of the bill:

"(6) An insurer that intends to apply under this act to charge a rate for a class of risk exposure that is higher than the rate set by the board shall give written notice to every policyholder who might be affected by the outcome of the application, not later than 14 days before making the application, of its intention to make the application.

"(7) Every notice given under subsection 1 shall state that the policyholder may make written representations to the board within 21 days of the mailing of the notice respecting the insurer's application and shall describe the procedure for doing so.

"(8) Delivery of a notice given under subsection 6 shall be made by first-class ordinary mail addressed to the policyholder at the address shown on the records of the insurer.

"(9) The board shall consider all representations received by it under this section and if it holds a hearing in respect of the application, it shall give notice of the hearing to every person who submitted written representation.

Mr. Swart: I think it is obvious what we are attempting to do here. When there is a general hearing and the rates are set or the scale of rates is set, then the rates are set. People will be aware of that.

However, when there is an exceptional case where the insurer wants to have an increase over and above that rate that has been set by the board, we feel that each policyholder should have the right to know that is outside that range.

I think most people will have some general knowledge that the rate has been set. If they get a notice of an increase in their rates, they will think, "Oh, well, that's what has been set by the board" and probably will not object to it because they feel it would be within the range.

However, this is a different circumstance when they get an increase which might be 10 or 20 or 30 per cent higher than the general range set by the board. Instead of paying it, they may want to go to another insurer and they will not know that. This is just for clarification to the consumers so they will know that. If they want to appeal or if they want to be present at the hearing or, for that matter, more likely just say, "To heck with that, I'm going to another insurer if they want to have a rate above what the board has set for the others," then they would have that knowledge.

Mr. Chairman: Do any other members wish to comment on the amendment by Mr. Swart?

Mr. Keyes: He makes it sound so reasonable that he is almost getting my support.

Mr. Chairman: That is true.

Interjection.

Mr. Chairman: No, not if you do not want to.

There are no further comments from members then? All right, shall section 23, as amended by Mr. Swart, carry? Those in favour? Those opposed?

Motion negatived.

Mr. Swart: I should make a comment about trained seals. Nobody can argue against it.

Interjections.

Mr. Swart: In committees there was supposed to be some independence, breaking party lines.

Mr. Chairman: Shall section 23, as amended, carry? Those in favour? Those opposed?

Mr. Swart: I am opposed to it when they vote down a central resolution like that without giving any reason.

Mr. Cureatz: It made sense.

Mr. Chairman: Carried.

Section 23, as amended, agreed to.

Mr. Cureatz: Look at it again.

Mr. Chairman: It is 11:45. We were going to deal with section 25a, which is a New Democratic Party amendment. Mr. Swart, do you wish to proceed with that now or do you--

Mr. Swart: I am in your hands on that sort of thing, Mr. Chairman. I may disagree with you when you rule something out of order that should not be out of order, but on this one I am in your hands.

Mr. Chairman: Then I am ruling that perhaps we should break for lunch now and come back at two o'clock. Is there unanimous consent that we do that?

Agreed to.

The committee recessed at 11:46 a.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ONTARIO AUTOMOBILE INSURANCE BOARD ACT

WEDNESDAY, FEBRUARY 3, 1988

Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Furlong, Allan W. (Durham Centre L) for Mr. Chiarelli

Runciman, Robert W. (Leeds-Grenville PC) for Mr. Sterling

Swart, Mel (Welland-Thorold NDP) for Mr. Farnan

Clerk: Mellor, Lynn

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Revell, Donald L., Legislative Counsel

Witness:

From the Ministry of Financial Institutions:

Nixon, J. Bradford, Parliamentary Assistant to the Minister of Financial
Institutions (York Mills L)

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 3, 1988

The committee resumed at 2:15 p.m. in committee room 1.

ONTARIO AUTOMOBILE INSURANCE BOARD ACT
(continued)

Consideration of Bill 2, An Act to establish the Ontario Automobile Insurance Board and to provide for the Review of Automobile Insurance Rates.

Mr. Chairman: When we left off when last we were here, we were coming up to a New Democratic Party amendment, section 25a.

Mr. Swart moves that the following part be added to the bill:

"Part IIa, cancellation or nonrenewal of coverage.

"25a(1) Where an insured intends to cancel or not to renew a contract of automobile insurance, the insurer shall give written notice of the cancellation or nonrenewal to the policyholder not less than 90 days before the contract expires.

"(2) A notice given under this section shall state the reasons for the cancellation or nonrenewal of the contract of automobile insurance.

"(3) Delivery of a notice given under this section shall be made by first-class ordinary mail addressed to the policyholder at the address shown on the records of the insurer.

"(4) Any policyholder who has received notice under this section may appeal the cancellation or nonrenewal of the contract of automobile insurance to the board.

"(5) No appeal shall be brought more than 30 days from the day on which the notice under this section was mailed to the policyholder.

"(6) The board, without holding a hearing, may make an order allowing or disallowing the cancellation or nonrenewal of a contract of automobile insurance subject to such conditions as are set out in the order.

"(7) Upon receipt of appeal under this section, the board shall make an interim order directing the insurer not to proceed with the increase in premium or the cancellation or nonrenewal of the contract of automobile insurance.

"(8) No order of the board under this section shall be made retroactive."

Mr. Swart: I think the purpose of this is obvious. We found, as we went around and held our hearings, that numerous people came to us and said: "I had my insurance cancelled with three days' notice before my insurance ran out. I cannot find insurance anyplace else." This just simply provides that there will be adequate notice, that there will be the right of appeal and that there will have to be reasons given for the cancellation.

We also found that many of them had been cancelled with no reason given for the cancellation; they just got the notice that their insurance was cancelled. That simply is the reason we are proposing this, just to take away the arbitrary right of the insurance company to cancel the insurance on very short notice, without giving reasons and without the individual having the right to make an appeal.

Mr. Keyes: Would this type of issue not be automatically covered in these amendments that we are talking about from the statement on behalf of the ministry the other day?

Mr. Chairman: You would not want to ask me, but I think Mr. Swart knows what I am going to say.

Mr. Keyes: I thought this type of issue was the one we were talking about in the amendments to the Insurance Act, from your comments the other day.

Mr. J. B. Nixon: If I could comment, Mr. Swart is correct that it is a very serious problem that we had identified prior to the April 23 announcement. When we made that announcement, that was one of the problems that we specifically identified we would be dealing with in the Insurance Act amendments, and that is why I made the statement this Monday to reassure the committee that the government's commitment stands. It is our belief that the matter is more appropriately dealt with under the Insurance Act by expanding the powers of the superintendent of insurance to deal with these types of problems and to provide him with the appropriate enforcement tools and remedies, rather than under the board.

If you put it under the board, you are giving the board more work and a different type of work than it was ever contemplated it would engage in. We intend to do it. We hope to be back in the spring session with the same type of solution, but under the power of the superintendent of insurance, not under the power of the auto insurance board.

Mr. Swart: I would like to make the point once again, if I may, that we do not have the Insurance Act before us. That is the problem. We have a bill here in which we are trying to remedy some of these kinds of problems and as soon as we have the opportunity, we should do it. I realize there is a section of the Insurance Act which deals with this at the present time. Is it one week's notice they have give?

Mr. J. B. Nixon: Something very short.

Mr. Swart: It is very short. They often did not get it if the mail was delayed.

It just seems reasonable to me that we pass this now. If we amend the Insurance Act and it is put in the Insurance Act, I am quite prepared to support its being removed from here, but we have this before us now, and therefore I think we should proceed with it.

1420

Mr. J. B. Nixon: The problem is I do not want to go into the details of the proposed amendment, but from the government's point of view it does not deal in the best fashion with the problem, nor does it deal with all the problems that may exist. We just think it would be a more effective remedy in the hands of the superintendent of insurance than in the hands of the

Automobile Insurance Board. It would be more expeditious for the consumer and it would be more powerful for the consumer if it was in the hands of the superintendent of insurance.

Mr. Chairman: Mr. Swart, I also have to rule that the amendment is not in order because it is beyond the scope of the bill. This bill that we are considering deals with the establishment of rates, a board to deal with rates, and it is not being established to hear complaints regarding increased premiums, cancellation or nonrenewal, as worthy as that may be. That is the reason I have to rule that the amendment is out of order, simply because it exceeds the scope of the bill. I presume you are going to challenge the chair.

Mr. Swart: Mr. Chairman, certain numbers of committees have dealt with numbers of new bills and, in general, as long as the amendments conform to the principles which are laid out in the bill, in the explanation of the bill or the title of the bill, those amendments have been accepted where there is--

Mr. Chairman: Mr. Swart, I am sorry--

Mr. Swart: I am going to challenge you.

Mr. Chairman: I know. You are debating it as well.

Mr. Swart: I would submit that it is within the purview of this bill. It certainly deals with the whole business of a rate review board. Therefore, I am forced to challenge you, because these things can set a precedent and I do not want that precedent to be set. This is a very, very fine line that you are drawing in ruling this out of order.

Mr. Chairman: I appreciate that. I refer to Beauchesne's fifth edition, citation 773(1), which basically states in part that an amendment is out of order if it is beyond the scope of the bill, and I am ruling it is out of the scope of the bill.

Mr. Swart: Do we use Beauchesne's here?

Mr. Chairman: As near as I can figure, we use it, and actually I must have been asleep at the switch because it is nondebatable. In any event, you are challenging the chair.

Those in favour of upholding the chair?

Those opposed?

The chair is upheld.

Mr. Swart: Is that a surprise to you?

Mr. Chairman: I sweated a bit.

We can deal with section 26, subsections 1 through 4.

Section 26 agreed to.

Section 27:

Mr. Chairman: Ms. Hart moves that subsection 27(1) of the bill be

amended by inserting after "to" in the third line, "categories of automobile insurance, classes of risk exposure and."

Motion agreed to.

Section 27, as amended, agreed to.

Section 28 agreed to.

Section 29:

Mr. Chairman: We have a government amendment to subsection 29(1).

Ms. Hart moves that the following clause be added to subsection 29(1) of the bill:

"(i) authorizing the board, following a hearing by the board, to approve risk management programs for one or more policyholders within such class or classes of policyholders as may be named in the regulations."

Perhaps we could move clauses 29(1)(a) through 29(1)(h). It might be needed to do that at this time. Does anyone wish to speak on clauses 29(1)(a) through 29(1)(h)? Shall clauses 29(1)(a) through 29(1)(h) carry? Those in favour? Those opposed? Carried.

With reference to the amendment as introduced by Ms. Hart, does anybody wish to speak on that?

Mr. Runciman: I would like to hear a little bit more of the rationale for including this. It does not seem to make a great deal of sense to me. If someone was making a submission to the board, I am sure the board is going to take into consideration any risk management program that they may have put in place in any event. I am just wondering why the board has to be involved in the approval process of implementation.

Mr. J. B. Nixon: By way of analogy to the driver training credit, which will be in the uniform classification system, we have proposed that there be a credit if you have had driver training education and completed the program. Right now, the Ministry of Transportation approves of driver training programs, so when you go to your broker you have to prove that you have completed an accredited driver training program.

There is no one in the province, or indeed the nation, that I am aware of who accredits risk management programs. So anyone could appear before the board and say: "I have been involved in a risk management program. I do not drive my taxi from 1 a.m. to 1:30 a.m. when all the drunks get out." That may not be an effective risk management program, so the board will have to get into the business of recognizing risk management programs in order that it can create the credit in the classification system for having completed or participated in a risk management program.

I think, if I may say, that this has the general support of many of the taxicab owners, operators and lessees. It is a way of accomplishing something that we heard a lot about and a lot of people wanted; that is, some sort of recognition in the rates if they had participated in a risk management program. There is just simply no other body that accredits or recognizes risk management programs.

Mr. Runciman: I suggest there are other ways of accomplishing the

same thing without getting the board involved in the approval process, but we appreciate where you are going anyway.

Mr. Chairman: Shall clause 29(1)(i) carry? Those in favour? Those opposed? Carried.

We have an amendment, clause 29(1)(aa), which perhaps should have been dealt with before we passed clauses 29(1)(a) through 29(1)(h).

Ms. Hart moves that the following clause be added to subsection 29(1) of the bill:

"(aa) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance to which part II applies."

Motion agreed to.

1430

Mr. Chairman: Shall section 29, as amended by the two previous amendments, carry? Those in favour? Those opposed? Carried.

The next matter is subsection 29(2). There is no amendment to it. Shall subsection 29(2) carry? Those in favour? Those opposed? Carried.

Ms. Hart moves that the following subsection be added to section 29 of the bill:

"(3) On a day to be named by a proclamation of the Lieutenant Governor,

"(a) subsection (1) is amended by striking out clauses (a), (aa), (b), (f) and (g); and

"(b) subsection (2) is repealed and the following substituted therefor:

"(1a) The board, by order, may make regulations,

"(a) prescribing classes of risk exposure and categories of automobile insurance for the purposes of this act;

"(b) prescribing procedures to be followed in assigning insureds and vehicles to a class of risk exposure;

"(c) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance to which part II applies;

"(d) exempting insurers from the requirements of part II in respect of such categories of automobile insurance, such coverages or such classes of risk exposure as may be set out in the regulations.

"(2) Regulations made under clause (1)(a), (aa), (b) and (f) and section 19, as they read before the coming into force of this subsection, continue in force until remade or revoked by the board."

Mr. Swart: It is changed quite dramatically from the original draft. Perhaps there could be an explanation on that.

Mr. J. B. Nixon: Yes, certainly. It is an amendment which is

incidental to the earlier amendment in subsection 19(2) which allowed for the transfer of responsibility from the Lieutenant Governor in Council to the board for amending, modifying and continuing the classification system. The board therefore acquires the power, by way of order, to change the classification system, set rules about the classification system and so on and so forth. On the date of proclamation, what we have to do is repeal all those minor regulatory powers which were--

Mr. Swart: I am sorry. Perhaps I can just interrupt. Now I understand what this does.

Mr. J. B. Nixon: OK.

Mr. Swart: I was just wondering, the original first draft we got was substantially different from this. I do not particularly want to take a long time pursuing it. I support this but--

Mr. Revell: It was decided, not from any policy point of view, Mr. Swart, but from a technical drafting point of view, that it would be preferable to leave the provisions dealing with the Lieutenant Governor in Council in subsection 1. Originally, what we were going to do was have the board's powers in subsection 1 and the LG in C's powers in subsection 2. There was actually a lot more fiddling at the print shop at a later stage and so this is purely technical.

In fact, the powers as set out remain the same in subsections 1 and 2--I have to say I do not have the old transitional provision, but I think subsection 2 at the bottom of the page has exactly the same purport as it did in the other. Just the lettering has changed a little bit.

Mr. Swart: OK. That answers my question. I just want you to know that I read everything I get.

Mr. Chairman: I believe you do. All right. Shall clause 29(3)(a) and clause 29(3)(b) with the new subsection 1a with clauses (a) through (d) and subsection 2 thereof carry?

All those in favour?

All those opposed?

Motion aged to.

Section 29, as amended, carried.

Section 30:

Mr. Chairman: Ms. Hart moves that the following subsections be added to section 30 of the bill:

"(2) A regulation made by the board under section 19 or 29 does not come into force until it is published in the Ontario Gazette or until such date following the publication as is set out in the regulation.

"(3) Subsection (2) comes into force on the day named in the proclamation under subsection 29(3)."

Mr. Keyes: I am assuming the existing part of section 30 is subsection 1. Is that right? Is that the way this works?

Mr. Revell: It will be fixed editorially.

Mr. Chairman: Any further discussion?

All those in favour?

All those opposed?

Motion agreed to.

Section 30, as amended, agreed to.

Section 31 agreed to.

Section 32:

Mr. Chairman: Ms Hart moves that subsection 10(3) of the Compulsory Automobile Insurance Act, as set out in subsection 32(1) of the bill, be struck out and the following substituted therefor:

"(3) The association may prepare rates in respect of contracts provided under the plan."

Mr. Keyes: Who are you referring to as the association?

Mr. J. B. Nixon: The Facility Association.

Motion agreed to.

Section 32, as amended, agreed to.

Ms. Hart: I move that the following section be added to the bill:

"32a. Section 21 of the Human Rights Code, 1981, being chapter 53, is amended by striking out "automobile" in the fourth line."

Ms. Poole: Mr. Chairman, I realize there may be some procedural difficulties with this motion so I would ask for the unanimous consent of the committee to move this motion.

Mr. Chairman: Would there be unanimous consent?

Mr. Swart: It seems to me that on a procedural matter it is up to the chairman to determine whether this matter is appropriately before the committee. You have taken this responsibility on two or three occasions up to now and I think that is the route we should follow. You declare this motion is in order or out of order now. I think that is the way we should proceed with this.

Mr. Chairman: OK. We do not have unanimous consent then. Has the amendment been read by Ms. Hart?

Clerk of the Committee: Yes.

Mr. Chairman: Is there a discussion on this amendment?

Mr. Swart: I am obviously very pleased to see this amendment. I proposed one identical to it and up until a day or two ago we had been told it was not possible. I realize this still has to get through the House.

Interjection.

Mr. Swart: Oh, yes, we were told it was not possible, that it should be done in the Human Rights Code, but I am glad it is here. I think it is important to have a principle as major as this incorporated in the bill. It should not be left to classifications or regulations. It is a fundamental principle that has been fought over and around by jurisdictions all across the world for many years. Not to have it in the bill I think would leave a very major loophole, so I am pleased to see it here. Obviously, we will be supporting it. It might be of interest to the members that on going over all the government amendments, I either wrote OK or question mark or no on them, but on this one I have written a whole lot of OKs all across the bottom of the page. Therefore, I am strongly in support of this amendment.

1440

Mr. Runciman: Dealing with Mr. Swart's comments, we have heard them before. It does not really deal with the issue that was raised about whether this is an appropriate amendment. There are the rulings you made earlier and even this afternoon that the bill deals with insurance rates, and here we are talking about a totally different piece of legislation being amended. This strikes me as something that it is quite inappropriate for us to be dealing with. If you search Hansard, I think you will find the parliamentary assistant's comments are quite similar to the ones I have just made. That was when this matter was raised earlier by Mr. Swart.

Mr. J. B. Nixon: I would just like to outline the government's position. This was something we committed to on April 23, 1987. It has been a consistent government commitment. We found in discussions with other jurisdictions, particularly in Europe, that the insurance industry is doing quite well, notwithstanding the ban on the use of age, sex and marital status as underwriting criteria. I can refer you to a number of jurisdictions. We think it is not only feasible, but from a social policy point of view, a very good thing to do.

Mr. Chairman: I thought I was going to be alone and go down in history as the nasty old man, but I guess Mr. Runciman has joined me. According to Beauchesne's fifth edition, citation 773(8)(a) and (b), "An amendment may not amend a statute which is not before the committee," and, "An amendment may not amend sections from the original act unless they are specifically being amended in a clause of the bill before the committee."

As the act referred to in the amendment does not meet either of these requirements, I must rule that the amendment is out of order.

Mr. Swart: May I just point out that we just passed an amendment to a bill that was not before the committee.

Mr. Chairman: I am sorry, Mr. Swart. I was asleep at the switch before, but a ruling is not debatable. You can challenge the chair if you wish to do so.

Mr. J. B. Nixon: I can also say that was in the bill.

Mr. Chairman: I understand that if you wish an explanation, it was part of the bill, but still it is nondebatable.

Mr. Swart: I am going to challenge the chair. This is an important enough issue. I am not supposed to speak on this, I gather. I am just going to say that I have seen many bills which amend other bills. Maybe it is because nobody raised it but I have seen that happen many times. I would challenge the ruling of the chair.

Mr. Runciman: Is it procedurally correct to request a recorded vote? I am so requesting.

Mr. Kanter: On a point of order, Mr. Chairman: There was an earlier motion by Ms. Poole to seek unanimous consent of this committee to permit this to be done.

Mr. Chairman: She did not get unanimous consent.

Mr. Kanter: Mr. Runciman raised unanimous consent. Is that what happened? I just want to be very clear about that.

Mr. Runciman: Mr. Swart raised it initially.

Mr. Chairman: There was no unanimous consent, so my ruling stands. I am going to call the vote. It is a recorded vote.

The committee divided on whether the chairman's ruling should be upheld which was agreed to on the following vote:

Ayes

Furlong, Hart, Kanter, Keyes, Poole, Runciman, Sola.

Nays

Hampton, Swart.

Ayes 7; nays 2.

Mr. Swart: I move that the following section be added to the bill:

"32a. Despite section 21 of the Human Rights Code, 1981, no insurer shall discriminate or make a distinction, exclusion or preference in a contract of automobile insurance on the basis of age, sex, marital status or handicap."

I want to point out that in moving this, of course this does not refer now to another bill. This is quite appropriate to be included in this bill. That is my reason for moving it. I just think, as I said before, that it is exceedingly important we have this principle exactlised in this bill. This will do it. We can amend the Human Rights Code at some future time. In the meantime, we have this clause in this bill.

Are you looking for a copy of it?

Interjection: Yes.

Mr. Chairman: Perhaps this would be an appropriate time. I think each of us should have a copy of this before us to deal with it. If it is the wish of the committee, we could allow the clerk five minutes to accomplish that feat. It sounded like she was out of breath before, so perhaps we will give her 10 minutes to accomplish that feat, if that is agreeable. Is there consensus on that? We stand adjourned until five minutes to three.

The committee recessed at 2:46 p.m.

1455

Mr. Chairman: You have now before you the new amendment by Mr. Swart. Does anybody wish to speak to it?

Mr. Swart: You might expect that I would want to speak to it. First, I want to submit to this committee that this resolution which I have proposed is not directly contradictory to the Human Rights Code. I think it recognizes that the Human Rights Code says you may not discriminate against individuals on the basis of age, sex, marital status, handicap, etc. Then it excludes that application to auto insurance, but it does not say you must discriminate on auto insurance.

I think that is a valid point. In this, we are not superseding the Human Rights Code on the basis of where it prohibits discrimination. It does not say you must discriminate on that basis. It leaves it silent on that matter. Therefore, the first thing I want to point out, in my view--and I think it is a valid argument--is that it does not contradict the Human Rights Code.

Second, as I have said on a number of other items, the amendment to the Human Rights Code as was originally proposed here is the neatest way of going. I am the first one to admit that is the case. But we do not have the Human Rights Code before this committee. As I said before, this issue is important enough that I believe it should be in the bill. Again, it is all very well to say that we are going to amend the Insurance Act, we are going to amend the Human Rights Code, we are going to amend a great many things. I have seen this happen, as I said previously, these commitments given in the best faith and nothing happens for a variety of reasons.

The House leaders get together--you all know this--and decide, "This is the important legislation we have to get before this session finishes." A great many of the ministers end up finding that they are not going to get their pet projects passed. There is not anybody in this committee and this House who will deny that is not the situation in every session. There are a lot of bills that they want to get passed and they never get passed.

Here we have the opportunity to write this in now, and I think this is the time we should do it. I do not think it is perhaps necessary really to promote this in this group who are behind me. I think the principle of it is accepted that you should not discriminate on the basis of age, sex and marital status. Certainly I, for one, believe that a person's driving record primarily should be the determinant of the insurance rates you pay, although we recognize--depending whose figures you get--that young males now pay two or three times as much.

We just have figures now from Gore Mutual which came in. Some of you will have had the opportunity to look at those, which indicate it is not three

times as high, it is twice as high for young males as it is for adults. We all know that risk on average is greater for young males.

1500

Mr. Runciman: Point of order, Mr. Chairman.

Mr. Chairman: Yes Mr. Runciman.

Mr. Runciman: We have heard all of this before and my view again is, despite what Mr. Swart is saying, this amendment is out of order. I do not want to be impolite. I think he has gone on at length and we have heard all of this before and it does not seem appropriate to me that we should be introducing this kind of an amendment which is going to in effect override or attempt to override the Human Rights Code.

Mr. Chairman: What is the reason for it being out of order?

Mr. Runciman: I do not think we have the ability to incorporate that kind of an amendment in the motion. I think the Human Rights Code is paramount in respect to the application of government legislation and I do not see how we can appropriately make this kind of amendment.

Mr. Chairman: Perhaps I will defer it or ask legislative counsel to comment on that.

Mr. Revell: I am not exactly sure what I am commenting on. I do not think it is appropriate for me to advise on whether it is in order or out of order.

Mr. Chairman: OK. You have raised the point. Perhaps it is one I am going to have to take under consideration. There was a suggestion that the word, "notwithstanding" and I am not sure whether the fact that "despite" as opposed to "notwithstanding" makes a difference. Give me a second.

From a legal standpoint I am advised that there is not a distinction between the word, "notwithstanding" or "despite."

In view of that it would be my decision that it is in order and that in fact that it is not amending the statute because it still remains in the statute as well as in this bill. Perhaps that is the rub, but it does not in fact amend it. It simply places in this bill a statement that does not have the effect of amending.

Mr. Runciman: I disagree with you Mr. Chairman. I think it has the effect of amending and I would challenge your ruling knowing I am going to lose it, but certainly I think it is an inappropriate amendment.

Mr. Chairman: You never know. All right, there has been a challenge to the chair's ruling.

All those in favour of upholding the chair?

All those opposed?

Ruling agreed to.

Mr. Chairman: We will continue Mr. Swart.

Mr. Swart: Put a mark on the wall, I voted with you.

Mr. Runciman: You have been doing that quite a bit.

Mr. Swart: No, first time on the challenge.

Mr. Chairman, I am not going to go into a great deal of time on this. I guess I would want to go back and say what I said at the beginning that I would submit that this does not contradict the Human Rights Code. The Human Rights Code does not say that you must. It is silent on prohibition, on discrimination, on the basis of insurance.

However, if I may I just want to finish the point that I was making. It is a legitimate point. Even though young people on average have more accidents and I guess we would say are worse drivers than adults, there are many of them who are not. I suppose the majority of young people do not have accidents, are not bad drivers. It is a much higher percentage than those who are. Is it fair that a good young driver, as is the case today, should have to subsidize the poor drivers of any age, granted, many of his colleagues, by three times as much as an older driver?

I can say here and with a lot of points to prove it that I have a son who in his youth was an excellent driver, and still is. He has never lost a point to this day. He worked for Consumers Gas and has had all kind of commendations, but he had to pay two or three times as much as I did, a person who was always down a number of points, and that is not fair.

Interjection.

Mr. Keyes: He said "points," not "pints."

Mr. Swart: That is right.

For that reason, I do not think we should penalize good, young drivers, male or female, any of those groups. If there is a risk, then we spread that over all of the drivers, and therefore, I fully support this motion which I have introduced and the principle which the members of this committee and the government has enunciated a number of times.

Mr. Chairman: Mr. Runciman, I had you on the list.

Mr. Runciman: I think that was in respect of a point of order.

Mr. Keyes: This is only a technical point. Are we not putting this as an amendment to section 32a, as we were before, instead of 26a. It is listed as 26a, but is it not 32a.

Mr. Swart: I did say 32a when I moved it.

I am sorry. We have changed numbers and sections.

Mr. Chairman: I gather it was read into Hansard when you introduced it as 32a.

Mr. Swart: I think I did.

Mr. Chairman: I think you did as well.

Ms. Poole: While I am in complete sympathy with what Mr. Swart is trying to accomplish here, and I was very supportive of the previous motion, I find myself totally opposed to the one he has just proposed. I find it is an extremely dangerous precedent to say that this act should overrule the Human Rights Code, and in fact it seems to go contrary to section 31 of the act which says: "In the event of conflict between this act and any other act, except the Human Rights Code, 1981, this act prevails."

That alone it would seem to me would point out we cannot pass a "notwithstanding" clause that has any force and effect, and I would point out that even the new human rights commissioner, Mr. Anand, when he was here, said to Mr. Swart that he did not approve having a "notwithstanding" clause incorporated in Bill 2 because of the dangerous precedent it set. So I would stand opposed to Mr. Swart's amendment as proposed.

Mr. Keyes: I find myself in support of Mr. Swart on this side for two reasons. I think the most telling argument he makes is the fact that we are not going against the Human Rights Code. Because the code or law excludes you from doing one thing does not mean that you have to do the reverse. That is the part that I think is most significant and which people are overlooking. Whether something is prohibited from being discriminated against, it does not mean that you must then, on the reverse side of the coin, discriminate in those particular areas.

Then I do suggest too that perhaps the whole exercise is a technical one and it will not ever come into force, because if, as Mr. Nixon has said, he intends to introduce in the spring legislature an amendment to the Human Rights Code, which would do the same thing in effect, it is quite likely that may very well come into effect--and being prior to this particular aspect of it, which has its fullest force once the review board has functioned and got all the classification set up. So from just a technical point of view, the amendment to the Human Rights Code may very well supersede this.

I think the very telling part is the fact that you are not forced to discriminate. So this is simply suggesting--in fact, perhaps maybe the wisest thing would have been to totally leave out any reference to the Human Rights Code and to simply add 32a saying, "No insurer shall discriminate or make a distinction," etc. and never mention the Human Rights Code. Then I think we could end up getting Mr. Runciman's support.

1510

Mr. Swart: I have that amendment here too.

Mr. Furlong: That is the one you should have.

Mr. Keyes: That would be one way around it.

Mr. Swart: You have to make quick judgement on what you do.

Mr. Keyes: Why make reference to it? Why make reference to the Human Rights Code? Just simply say, "no insurer shall discriminate," etc., and these things as put in. If we are ruled out of order or defeated on the basis of it being--how about if I move an amendment to his amendment to strike out the reference to those? Would the chairman accept that? Amendments to amendments are always in order from my understanding of Beauchesne.

Therefore, I move that any reference to the "notwithstanding" section,

section 21 of the Human Rights Code, be struck out and the clause just begin, "No insurer shall discriminate or make a distinction, exclusion or preference in a contract of automobile insurance on the basis of age, sex, marital status or handicap."

Mr. J. B. Nixon: I would just like to comment that it is my advice and I think my understanding that if you do that, what you intend to accomplish will not be accomplished because the Human Rights Code will prevail. So why do it?

Mr. Keyes: I do not know why it would.

Mr. Runciman: I think it will prevail in anything.

Mr. Keyes: If we put it this way, it is a lot simpler to put this thing through and it still gives the indication of the intent of the legislation. It is the lawyers who will argue this other side. Thank heavens I am not the lawyers.

Mr. J. B. Nixon: Let me just comment. The chairman of the Human Rights Commission was before us and he made the argument, which has generally been accepted in the case law, that the Human Rights Code has almost quasi-constitutional status. I realize it is not a constitutional document, but in that case it prevails over all other statutes on the Ontario books of legislation. So all you are saying is that automobile insurers are not allowed to do this, but the Human Rights Code, which overrides, says they can do it. I agree with your legal argument, but we are dealing with law.

Mr. Keyes: I am just a layman, so I throw in my layman's view and let the lawyers--

Mr. J. B. Nixon: Just a little more clarification. The Human Rights Code specifically says, "You must exempt yourself from the Human Rights Code if you intend to attempt to override the Human Rights Code."

Legislative counsel has a comment.

Mr. Revell: In reviewing subsection 46(2), which I think is the relevant provision of the code, it provides, "Where a provision in an act or regulation purports to require or authorize conduct that is a contravention of Part I, this act applies and prevails unless the act or regulation specifically provides that it is to apply notwithstanding this act."

Section 21 is in fact not in Part I of the code. It appears in Part II, which is the application provision. So I am not sure I agree with Mr. Nixon on this particular point. We are not overriding Part I of the code, we are dealing with Part II.

I agree with Mr. Keyes that the words "despite section 21 of the Human Rights Code 1981" are one of these drafting bugaboos that legislative counsel face on a very regular basis as to whether or not you should put those kinds of words in. I think legally, this section works exactly the same with or without the sections.

Section 21 of the Human Rights Code is a very curious provision, not in terms of what the goal is. It does deal particularly with the problems of the insurance industry, being allowed in certain cases, if you have bona fide grounds--you have to have reasonable and bona fide grounds--because of age,

sex, marital status, family status or handicap, before you can effectively discriminate in the insurance industry.

Section 21 provides--just getting into it--"The right under sections 1 and 3 to equal treatment...is not infringed where a contract of automobile...insurance...differentiates or makes a distinction." Essentially, this is an override of part I, and what Mr. Swart's amendment attempts to do, I submit at law, is override an override. When you are a legislative counsel, does an override of an override require a "notwithstanding" clause? I think the latest statement on the law really does not require those words. Yet there are others who would feel comfortable because it points you to a statement that may appear to be contrary.

I do not know whether I have thrown more mud on it.

Mr. Chairman: You have given a perfect legal opinion. It is the way they work. That is why they hire another lawyer to interpret the first lawyer's opinion.

Mr. Revell: With or without those words, the section has the same effect. This provision is enforceable not under the code, but enforceable only under the new act.

Mr. Keyes: We had better delete any reference to the code.

Mr. J. B. Nixon: Can I just suggest, and I hate to do this, that we take five minutes? If we are to consider that proposal, I would like to find out what it entails in terms of further amendments, if any, to the legislation. My example, being quite--

Mr. Swart: I am quite prepared to give, as far as I am concerned, unanimous support to a break, for whatever time is necessary.

Mr. Runciman: Why do we not move on with other matters while the staff can look into that question?

Mr. Swart: Mr. Nixon might want to consult with them and therefore have to leave here.

Mr. Chairman: Do you want to go back and deal with the definitions?

With unanimous consent, we will have a break until 3:25 p.m.

The committee recessed at 3:17 p.m.

1528

Mr. Chairman: I would like to start off by saying to err is human, to admit you have erred I guess is even humaner. I asked the clerk to check with Smirle Forsyth on this because it gave me some concern. When I ruled on Mr. Runciman's point of order that the amendment was out of order, we were caught up in the entire bill. It was not until Ms. Poole started referring me to the fact that we had passed section 31 that I realized, because the impact of the amendment that is proposed would have been one that would have flown right in the face of section 31 and the Human Rights Code, that I should have ruled that it was out of order. I apologize for that.

As I say, we got caught up in the situation of the two amendments that

were put forward and it was not until Ms. Poole spoke and referred me to section 31 that I asked the clerk if she would check with Mr. Forsyth as to whether I have the right to rub out my ruling, as it were. As a matter of fairness, I have to do that.

Mr. Swart: Before you make your ruling, I would like to speak because you will not let me speak afterwards. Good reason, is it not?

Mr. Chairman: In the light of the unusual circumstances, despite the fact that it may be nondebatably in most circumstances, I am going to let you speak because I think that is fair.

Mr. Swart: We have had, I understand, a ruling from our solicitor here that this does not contradict the Human Rights Code. If I am wrong, I want to hear it. It was my understanding that we did not even need the override.

Mr. Chairman: All I can say is that--

Mr. Swart: Can I hear the ruling again?

Mr. Chairman: There is a section in Beauchesne which states that, "An amendment must not be inconsistent with, or contradictory to, the bill as so far agreed to by the committee, nor must it be inconsistent with a decision which the committee has given upon a former amendment."

There is a further item that also is referable. This was the one I was looking at that gave me concern. It is Erskine May's. I am not to preclude, if you have something further to say, Mr. Swart, because the effect of it is, section 31 is in the act and says, "In the event of conflict between this act and any other act, except the Human Rights Code, 1981, this act prevails." The Human Rights Code still being in existence, if we put your clause in there, it has no meaning. It conflicts, so actually the purpose of putting it in there would have absolutely no meaning whatsoever. That is why I feel the point of order that was raised by Mr. Runciman was an appropriate one and I should have ruled accordingly.

Mr. Swart: I want to hear from the solicitor on this because it is my interpretation that it is in conflict.

Mr. Revell: Having consulted with my colleagues during the break, I have to admit that I missed the significance of "except the Human Rights Code, 1981" in section 31 and I am fully in accord with the statements by the chair. The problem would be, Mr. Swart, that if this motion goes in, it clearly does conflict with the principle that was enunciated, that is, that every provision of the Human Rights Code overrides the provisions here. It is a broad statement. It does not go just to part I.

The further problem with it is that if it does go in with the "despite" clause, you end up with a problem, that is, that section 21 of the code clearly does anticipate certain kinds of permissive or permitted discrimination.

Mr. Chairman: You would have to show bad faith.

Mr. Revell: Once you find bad faith, of course, you do not have any right to discriminate any further. It is a very difficult issue and I think the chair's opinion is the correct one.

Mr. Swart: It really is a difficult issue when the government does not want it there.

Mr. Chairman: I have allowed debate on the question of Mr. Runciman's motion.

Mr. Hampton: For further clarification, could we ask legislative counsel to read section 21 of the Human Rights Code?

Mr. Revell: Section 21 provides--I will not go any et ceteras this time; I will read it through, word for word:

"21. The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or handicap, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and bona fide grounds because of age, sex, marital status, family status or handicap."

Mr. Swart: As a layman, is my interpretation of that not correct that it says in effect it does not apply to insurance policies, etc., that this discrimination part of the Human Rights Code does not apply to those particular instances of insurance contracts?

Mr. Revell: You have to come within the reasonable and bona fide grounds before you can rely on section 21 is the way I read it.

Mr. Swart: It says it does not apply. We are not attempting to amend the Human Rights Code because it does not apply. It is exempted. It does not apply. We are not attempting to amend the Human Rights Code. What we are doing is saying for auto insurance that age, sex, marital status shall not be factors in setting classifications.

Mr. Revell: The problem becomes the conflict between section 31 of the bill and the fact that this provision attempts to override what is clearly a permitted ground in that provision. If you take out the "despite" clause, you end up with a problem that one provision seems to be allowing certain kinds of discrimination and another one is specifically saying, "No, you cannot do that kind of discrimination." It is a very, very difficult issue to give a full opinion on.

Mr. Swart: I concede that because we have had two now.

Mr. Chairman: Mr. Swart, I want to make something perfectly clear. It is a principle that the chairman is to be totally unbiased. Unfortunately, we have gone far enough down the pipe that I suppose one might think that I am being biased. I am trying to carry out the function of a chairman. As I said, the decision I made was done as we were going through the bill. It was not until Ms. Poole raised the issue of section 31 that I was then faced with the fact that I had made a decision that was wrong. I asked the clerk to check with Smirle Forsyth, which she did, because I did not know whether, as chairman, I was able to reopen or to redo what I had done in error.

That is what I am trying to do now, and it is done on the basis that there is, in fact, a clear breach of the rules, as I have read them before. I will not belabour the fact--it is on Hansard--and that is in fact the

decision. You have your remedies if you wish to challenge the chair. I recognize, as Mr. Runciman said before, that may or may not be of value, but as chairman, I think that is the job I am here to do and I want to do it fairly. I do not think it would be proper to walk away from here, having made a wrong decision, not to have admitted it and reversed it, so that is my ruling.

Mr. Swart: I will let Mr. Keyes speak and then proceed. At some point, I want to challenge that ruling.

Mr. Chairman: Again, it is nondebatable. Unless Mr. Keyes has something to add that is not debating the ruling, then the appropriate position to take is to move a challenge of the chair.

Mr. Keyes: I am not debating the ruling but I am just looking at the explanation from section 21 of the code that was read. My submission is that this amendment put in does come in conflict with the code, because it does say that it is permitted to discriminate under the code and in the matter of insurance, automobile, life, annuities and the rest of it, but it does not say you must.

Mr. Runciman: That strikes me as debating your ruling.

Mr. Chairman: It is a debate, although I think what Mr. Keyes was asking for was--I may be wrong--a rethinking of that by legislative counsel. This is an unusual set of circumstances and, as I said before, I apologize for it.

I am wondering if perhaps the wiser thing to do, if we can, might not be to leave this over and let legislative counsel review it again because, in fact, Mr. Swart, without putting down any of our staff, they did, in fact, render a decision that they have now decided is not correct. I think it is important enough that perhaps it is something that should be considered overnight. We can go on to deal with something else, leave it at that and leave it open until tomorrow, if there is unanimous consent to that effect. I think it is a matter of fairness.

1540

Mr. Swart: I would agree with that. Could I, Mr. Chairman, with your permission, just put one other thought regarding this? If we did not pass--

Mr. Runciman: On a point of order, Mr. Chairman: I think you have given Mr. Swart considerable latitude during all of these hearings. We have heard him on this issue ad nauseam. I do not think there is any point in carrying on and it is completely out of order to allow him to carry on.

Mr. Chairman: I think I have to be fair to all parties, Mr. Swart. I think Mr. Runciman's point of order is well taken. If we can leave that, you can speak to legislative counsel--or any other member can if he or she wishes--to have the matter clarified and we will deal with that first thing tomorrow.

The next item is a government amendment to section 32b.

Mr. Chairman: Ms. Hart moves that the bill be amended by adding thereto the following section:

"32b. The statutory conditions set out in section 207 of the Insurance Act, being chapter 218 of the Revised Statutes of Ontario, 1980, are amended by adding thereto the following section:

"1a. Where the insurer has incorrectly classified its risk exposure under this contract, the insurer shall make the necessary correction and shall refund to the insured the amount of any premium overpayment with interest at the prejudgement interest rate, as defined in clause 137(1)(d) of the Courts of Justice Act, 1984, for the period that the incorrect classification was in effect."

Mr. Swart: I am in support of the amendment, but you did quote Beauchesne to us, and something about one act not amending another.

Mr. Chairman: I am asking for comment on the amendment as placed and I will make a ruling--

Mr. Swart: I support the amendment as being reasonable.

Mr. Chairman: Do any further members wish to comment on it?

Mr. Runciman: I am just curious about the mechanics of this. How does someone determine they have been misclassified? What is the process there?

Mr. J. B. Nixon: If you recall--I do not know if you were here--yesterday morning I made a statement outlining further amendments to the Insurance Act which the government would proceed with. One of the proposals is that the actual specification form describing the policy which is received by the consumer will outline not only the extent of coverage they have, but the cost associated with each item of that coverage and the reason for that association being made because they are in a certain classification.

At the bottom of it, the insurer will have to attest to the accuracy and truth of that classification and price. The classification system and the rates charged for each class will be public. So either through their broker the consumers could compare what they got with where they think they should be, or they can do it themselves by referring to the public notice, and so they will be able to determine that.

Mr. Runciman: And if they disagree?

Mr. J. B. Nixon: If they disagree, the proposal as I understand it is, with the expanded powers of the office of the superintendent of insurance and the consumer policy services branch, they will have someone they can phone and say, "I think I have been misclassified," and that person in the superintendent's office will then pursue a remedy with the insurer or the small claims court.

Mr. Swart: On a point of order, Mr. Chairman: You quoted from Beauchesne--I may be wrong in this; I do not have the rules of order in front of me--but does it not provide under the rules of order that if there is any conflict or if it is not covered by the rules of order, Robert's Rules of Order applies?

Mr. Chairman: I am told Robert's Rules of Order does not apply to anything in this place. One would think that if they did, we might get through a lot of things much more expeditiously. I am told by the clerk that it is Beauchesne.

As I understand it--and I believe this to be correct--the only method by which a matter can be dealt with if it, in fact, breaches the rules is by unanimous consent and I have not heard that. If there are no further speakers on this issue, I would indicate that it is out of order, citing Beauchesne's fifth edition, citation 773(8)(a) and (b), which states that an amendment may not amend a statute which is not before the committee and an amendment may not amend sections from an original act unless they are specifically being amended in a clause of the bill before the committee.

As the act referred to in the amendment does not meet either of these requirements, I must rule this amendment out of order as well. That is nondebatable.

Mr. Swart: I am going to challenge your ruling, not in any vindictive sense, but just simply that I think it is something that has to be cleared up and this may be the way of doing it, because in the 11 years I have been here--and I am sure other members who have been here for a while agree--all kinds of bills have amended other bills. So I am going to challenge your ruling.

Mr. Chairman: The chair is challenged. Those in favour of upholding the chair's ruling? Those opposed?

Agreed to.

Section 33 agreed to.

Mr. Chairman: Section 33a is an amendment by the New Democratic Party.

Mr. Swart moves that the following section be added to the bill:

"33a. This act is repealed on the day 12 months after the day on which automobile insurance is first provided to the public by the government of Ontario or through an agency of the government of Ontario."

Mr. Keyes: Beauchesne says no frivolous amendments are allowed.

Mr. Runciman: I think this is a prophetic amendment.

Mr. Keyes: "Pathetic," did you say?

Mr. Runciman: Prophetic and pathetic, both.

Mr. Swart: Given the things that have been ruled out of order, before I go into my lengthy spiel on this, I would like to know whether you are ruling it out of order.

Mr. Chairman: You want to peek behind the veil, do you? It is OK. Go ahead.

Mr. Swart: I do want to speak to this. Everybody knows the intent of this motion we have before us. It is to establish the principle that this government is looking seriously at the alternative of a public system and is going to work towards that. That is not an unfair interpretation of this amendment which I have before you.

I just say, on behalf of our party, that we are deeply disappointed,

given the evidence we have had over the last three weeks, that the government has not moved and this committee has not moved towards recommending that we implement a public auto insurance system in this province.

1550

I want to say, and I say this very advisedly, that there is not a member of this committee who travelled with the committee and heard the majority of the submissions who does not know that the public auto insurance systems in Manitoba, Saskatchewan and British Columbia are substantially superior to the system we have in this province or the system that is proposed by this bill before us.

We had all kinds of witnesses coming here from the west, even those who are philosophically opposed to public insurance, who said it was a good system. One of the first we had here was an agent, you will recall, from Manitoba, a past president of the Insurance Brokers Association there, who praised the system out there. Although he was philosophically opposed to it, he did not like the lack of competition, but when we came down to the questions or even his statements with regard to what he thought of the system, his comments invariably said it was a really excellent system.

I quote from that broker, Mr. Garriock, who in fact also was a broker in Kenora. He said, "In my opinion, the system within Manitoba is a good system." He also went on to say: "There are advantages within the product itself that is offered within the province. The no-fault accident benefits are the best in Canada, bar none. We have very high limits. For example, in Manitoba the medical expenses of the product are \$100,000 versus Ontario at \$25,000. Total disability benefits of \$300 in Manitoba versus \$140 in Ontario. Partial disability, \$60 per week in Manitoba with nothing in Ontario. Permanent impairment is up \$20,000 in Manitoba with nothing in Ontario. Death benefits are \$2,000 to an unlimited amount, depending on awards that may be considered by a court. In Ontario, it is \$1,000. Funeral expenses in Manitoba are \$2,500 versus Ontario at \$1,000."

He does not mention that also the no-fault out there provides collision coverage as well, now \$350 or \$300 deductible, but everybody has collision coverage in Manitoba. When you come to the comparison of rates, you have to consider the additional coverage that they have out there. Even then, their rates are substantially cheaper, and we will get into that in a few minutes.

He says: "We certainly have nothing negative to say about that. The product within the Autopac system is a good product." That is what a person who is philosophically opposed to it has stated here, a person who obviously does not back the NDP, obviously he is in the same position as all the Liberals and the Conservatives out there who are philosophically opposed to it, but he said, "By golly, we have to keep it because it is a good system. It works." It provides a more comprehensive coverage, fairer coverage and at a cheaper rate than does the private system.

I want to come to a comparison of rates. This committee had a report submitted to it, on my initiative, by our research department which did a comparison of 1986 rates. I am the first one to admit that those rates, as reported by our research department--I am not in any way trying to downgrade them; we are also the first ones to admit it--are not an exact comparison of the rates. There are all kinds of qualifications that have been put in by the research department. Yet, having said that, you can compare favourably what was done by the research department with all the other independent studies

that have been done across the province, across the nation. You can look at what the insurance brokers have done, which tried to show that Toronto was lower. Then we have a report by Jack Lyndon, president of the Insurance Bureau of Canada, who was quoted in the press last week as saying, "Yes, they are lower in those western provinces; not as much as the NDP says, but they are lower in those western provinces."

Those rates as provided by our research department show the rates in effect in Manitoba in 1986. Of course, there has been a nine per cent rate increase since then and then, up until yesterday, a 24 per cent increase; it is now around the 17 per cent increase in rates. These are the rates of 1986. I am not trying to fudge this at all.

In Manitoba, the average premium on the technique that was used, and it is not perfect, was \$281, Saskatchewan \$292, British Columbia \$400 and Ontario \$553. We took those rates from the research department and added the increases since that time. I think we did this accurately and we added the increases which had taken place in British Columbia, which brought that \$400 in 1986 up to \$418. It was a 4.5 per cent increase. We took the 22 per cent, which brought it up this year, 1988 to date, \$510. In Saskatchewan, there was no increase between 1986 and 1987, but this year it had a 10 per cent increase, which brought it up to \$321. Manitoba had a 9.7 per cent increase, which brought it up from \$281 to \$306; in 1987 to \$380. That is using the 24 per cent increase in 1988. Ontario, from \$553 to \$581 in 1987, and again we used the figures of the superintendent of insurance for Ontario which said there had been about a two per cent increase per month on average prior to April 23 of last year. We were generous. We used only the five per cent increase when we could have used seven per cent, bringing it up to \$581. Then 1988 to date, the 4.5 per cent increase brings it up to \$607.

That means today the comparison of rates, after all this hue and cry out west, according to this kind of investigation, shows that Saskatchewan is low at \$321, Manitoba is \$380, British Columbia \$510 and Ontario \$607, for coverages which in fact are superior, particularly in Manitoba, to what we have here. If somebody believes we have doctored those figures for Ontario to bring it up to \$607, let me use the document which has been submitted to all members. Yesterday I believe we got this from the Gore Mutual Insurance Co. I found they were very frank and open when we asked them questions when they were here and now in supplying information to us, and I commend Gore Mutual for doing it.

If you will look at page 2 of that submission they made to us, again at my request, you will find they say the number of Ontario automobile policyholders and related premiums is as follows: the number of policies in 1984 was 61,508; in 1985, 79,418; in 1986--you may remember they said they increased the rates quite dramatically when they found they were losing money and in 1985 they went after business--65,456; and 1987 was 62,204. Then we have the direct premiums written. I will not give you it for the three provinces. Approximately \$31 million in 1984, \$42 million in 1985, in 1986 it was \$46 million and this year it is \$46,374,000.

By simple computation, if you divide the number of policies, 62,204 policyholders, into \$46,374,000 you come out with an average premium for Gore Mutual of \$745. I am not saying this is typical of the rates in Ontario. I suspect Gore Mutual may operate more in the urban area than it does in the rural area of this province, although that is only speculation on my part.

But there is no question that any objective comparison done of rates will prove that the rates in the west, under the public plans for comparable coverage, are far below what they are in Ontario under the system we have here. This has been so since the study was done back in 1977, I guess it was, by Woods Gordon. They pointed out the same thing in those comprehensive reports. Any investigation since that time by any independent bodies--do not think what the New Democratic Party says about it, but any independent bodies--shows those same kinds of comparisons.

Of course, the best proof of the value of their systems, how good they are, is that, although the Liberals and the Conservatives and the insurance companies fought bitterly against the implementation of those plans by the NDP in Manitoba, Saskatchewan and British Columbia, as the Liberals and the Conservatives and the insurance companies fought against it in the last provincial election here and are continuing that fight, the simple facts are that none of them, in Manitoba, Saskatchewan or British Columbia, proposed that it should be abandoned.

I think all of us who sat in last Thursday afternoon were somewhat amused when the official spokesman for the Conservative Party of Manitoba came down here--I presume upon the invitation of the Conservative Party in this province--to tell us about the horrible things that were happening out there in Manitoba. But when it came down to the bottom line, the Conservative Party in Manitoba does not want to replace the public system.

Can you imagine a government composed of people with the philosophy of my good friend Mr. Runciman--

Mr. Runciman: Who brought in rent controls.

Mr. Swart: --who would say, "We are going to keep this publicly operated insurance system"? My God, it must have something going for it, must it not, when you have people of that kind of philosophy saying that.

I asked Mike Bessey--I believe it was he who came here as the researcher representing the Conservative Party out there--what they were asking for in that mammoth demonstration--at least he said it was a mammoth demonstration--against the insurance system in Manitoba. It turned out it was not a demonstration against the system at all. As we all know, it was a demonstration against the rates out there.

I asked him what they were asking for. No, no, they were not asking that the system be abolished. I just want to quote some of that. It is very, very interesting. I said, on page J-52 of the Hansard for January 28, 1988: "You were not, though, asking yesterday, nor has your party asked, that Autopac be privatized." Mr. Bessey said, "Right." Then I said, "You have not?"

Ms. Hart: Emphasis added.

Mr. Swart: He said, "No, we have not."

Mr. Chairman: Mr. Swart, you are on a roll and I do not want to interrupt, and you are going to say, "Well, then, don't."

Mr. Swart: I will only say that once.

Mr. Chairman: But I want to say this to you. Our researcher has a problem in that you had proposed some sort of a letter or epistle or whatever

to the minister. If she is to have reasonable time to do it, we are going to have to decide at least whether we are going to do it today, so she can get on with it, if she is going to do it. Otherwise, we are going to be coming back here, perhaps on Friday, which I am sure no one is really interested in doing.

Mr. Swart: I am willing to bow to your judgement.

Mr. Chairman: I just thought I would say that.

Mr. Swart: If all of you will be very happy to hear this, I will start again from the beginning.

Mr. Chairman: I just thought I would let you know that.

Mr. Swart: No, I agree and I am one of the most anxious that we do have a report prepared.

Mr. Chairman: I did not necessarily speak for the committee that that is what would ultimately happened. I just said that I want the researcher to have the appropriate time, if that is the decision, to be able to put one together.

Mr. Swart: I understand that and I presume what is being suggested is that perhaps I would like to conclude at this time and resume again at some future time after we have decided this issue. I do not object to that.

Mr. Chairman: I would never interfere. You have the absolute right to debate as long as you like on a bill, so go ahead. Or do you wish to stop and have us deal with that issue?

Mr. Swart: I would be pleased to stop as long as you do not conclude that I have finished.

Mr. Chairman: That is one ruling I would never make. I would be totally wrong.

Mr. Swart: I think that is very reasonable. Perhaps then I could put the motion, if I can find it, that I put the other day.

Mr. Chairman: I might say that you have not concluded your debate on section 33a. I am wondering if just before we do that, because as I read it I do not think we are going to have any difficulty with the definitions and that is the last item to be voted on other than section 32a, could we--

Interjection.

Mr. Chairman: I am sorry, section 34 as well, but could we deal with the definitions and then go into that issue? Then you could come back and continue on with section 32a, if you wish. Do we have unanimous consent to that effect?

Mr. Runciman: Deal with the definitions.

Mr. Chairman: OK. Deal with the definitions, get them out of the way and then we can come back.

Section 1:

Ms. Hart: On a point of order, Mr. Chairman: The government has three amendments to section 1. Is it appropriate to read them all at once?

Mr. Chairman: Unanimous consent that the three amendments be read all at once and voted on separately? Is that agreeable?

Mr. Swart: That is agreeable.

Mr. Chairman: Fine.

Ms. Hart moves that the definition of "automobile insurance" in section 1 of the bill be amended by adding at the end "other than a motorized snow vehicle."

Ms. Hart moves that the definition of "industry-wide hearing" in section 1 of the bill be struck out and the following substituted therefor:

"'industry-wide hearing' means an industry-wide hearing required or permitted by part II."

Ms. Hart moves that the definition of "rate" in section 1 of the bill be amended by inserting after "includes" in the fourth line "commissions."

Shall section 1 as to the definition of "automobile insurance" carry? Those in favour? Those opposed? Carried.

Shall section 1 as to the definition of "industry-wide hearing" carry? Those in favour? Those opposed? Carried.

Shall section 1 as to the definition of "rate" carry? Those in favour? Those opposed? Carried.

Section 1, as amended, agreed to.

Mr. Chairman: We are not certain whether we voted on section 32 as amended. Just to be on the safe side, I will call that again.

Section 32, as amended, agreed to.

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Mr. Chairman: Mr. Swart, you wanted to--

Mr. Swart: I will move this motion. It is changed somewhat and perhaps it is more likely to get support.

Mr. Chairman: Mr. Swart moves that this committee make a report with recommendations to the classification committee with copies to the Minister of Financial Institutions on our findings from our three weeks of public hearings on auto insurance.

Do members wish to speak to that matter?

Mr. Keyes: I have a query to the mover of the motion as to some of the scope that he would see there. My comment outside of the committee was that we have certainly gained a great deal of information from this four-week review of automobile insurance in Ontario, but it would probably take just about as long to get consensus on what was contained in that report as it

would be to do this whole bill. I would like to know the scope. Maybe you read it there, and I was double-checking to try to find whether you did.

Mr. Chairman: Could we have a copy of that, Mr. Swart? I think that is of some importance. Oh, we have one. Right.

Mr. Swart: --classification committee which is being set up. Is that the right name for it? There is a committee that is going to be considering it.

Mr. J. B. Nixon: It is proposed that the description of the draft classifications which you received at the commencement of the committee hearings, plus the actual regulations written in legalese, which are 250 pages long, will be released to a wide variety of interested groups, and you have that list. In addition, they will be available to anyone else who wants them for public comment in writing to the ministry.

Mr. Swart: To the ministry? Then I should leave it, "to the Ministry of Financial Institutions." Would that be right? I am just asking you. "This committee make a report with recommendations to the Ministry of Financial Institutions on our findings from three weeks of public hearings on auto insurance."

Mr. Chairman: You are changing that to "ministry" as opposed to "minister"?

Mr. Swart: Yes. I am changing that to "ministry."

Mr. Chairman: Would you all change that on the copies you have?

Mr. J. B. Nixon: If it is changed to "ministry," then it goes through the minister's office directly to the responsible people.

Mr. Swart: Then I will leave it exactly as I had it.

Mr. Chairman: Rub out that change then.

Mr. Swart: I think you have a copy of this, have you not, Mr. Chairman, the same as the original?

Mr. Chairman: Yes.

Mr. Swart: May I just elaborate, since I have been asked by Mr. Keyes to do so, and say that it is not my intention that this would be a large, voluminous document. It is my intention that we should deal with, if we have opinions on it, the matter of the weighting that is given to experience and the length of experience that is in this. Also, I would like to see dealt with the matter of forgiveness of an event. I know these are only proposals we have before us but I do think that after these public hearings we can perhaps say something useful on those.

I think we might have something useful to say about taxis after the submissions we had. I would like to wrestle with the idea of tying penalties to driver's licences. That may not be possible without a public plan, but I would like to wrestle with that and see if we can come up with something on that because I think that is the way penalties should be paid, not just on the vehicle, but on the driver's licence.

Another possibility is an arbitration settlement board. We heard about

the one in British Columbia where rather than all these things going to court, there would be an arbitration settlement board. It is apparently working very well there. These are the kinds of things I would like to see dealt with. As I say, I am not going to suggest a wide group, but I think we can make useful submissions on these items.

Mr. Keyes: I think that if we start doing that, we will go far beyond--correct if I am wrong--the mandate of the committee to study the legislation before us. If we try to get in that we are making recommendations to the minister on establishing these other aspects, such as a compensation board and the penalties, I think that perhaps almost the same might have been achieved by filing with the minister just the research document that has been so well done, I must say, by Ms. Swift, that shows all the types of recommendations brought before this committee by the interested groups.

To me, the filing of that document would achieve very well most of what Mr. Swart has, because I do not believe this committee is empowered to make recommendations on the things he just talked about. It would go beyond our scope. But this would be an excellent document to file with him and then for reference to any of the following ideas, he could refer to the entire exhibits that were presented to us.

Mr. J. B. Nixon: Just as a point of information: Of course the committee as I understand it, subject to the chairman's ruling, governs its own conduct, but the ministry in addition to the legislative research office has had several staff here whom you have probably noticed, who have participated in the drafting of this legislation and the policy deliberations behind the legislation for some 10 months now. They have been attentive here, listening, learning and gathering information. They have done a very similar analysis to the analysis done by the legislative research office which Mr. Keyes referred to. So we have all that information. It is something that is being analysed right now. I just wanted to let you know that.

Ms. Hart: The difficulty I have with making recommendations to the minister on some of the subjects Mr. Swart raises is that these were not subjects we solicited people's views on. They peaked our interest. There is no question about that. We heard in some cases one side of the issue. I do not feel confident that on an issue, for example, like arbitration, which was raised, that I know enough about that issue to make a recommendation to the minister. It was not part of our mandate, but even apart from that, we did not get enough information on all sides to be in a position to make a recommendation that would hold water in my view.

I agree with Mr. Swart that we heard a lot of interesting things and there are some areas that are worthy of being pursued. I am sure the minister's staff took note of them as well. As a member of this committee, I am not comfortable saying I could make a recommendation on those subjects based on what we heard.

Mr. Kanter: I agree with Ms. Hart that I think Mr. Swart is suggesting an impossible task for this committee, not just within the short time frame available to us but really within any reasonable time frame at all. He mentioned five topics. On just one of them, for example, the question of driver experience--I presume that is years of driving experience--We heard information that too much weight or too little weight was being given to years of driving experience depending on the interest of the person involved. I think it would take a lot of actuarial or economic expertise, experience of other systems, Canadian, American or European or whatever, to make a sound recommendation on that subject.

Similarly with respect to driving record, forgiveness--take the taxicab industry. I had no idea of the complexity of that industry before we started these hearings. In fact, it seems that the industry in each area has its own separate characteristics. I think it would be extremely difficult, and perhaps a little presumptuous of this committee to come up with an overall solution to the taxi industry in a day or two or three or four, whatever we might have before the Legislature resumes.

There may be a few areas where there might be a broad consensus, which I suspect will be reflected in the transcript of our deliberations. I suspect there will be a lot more areas where there would be no consensus at all, not necessarily on the basis of partisan political parties but just incomplete information, inadequate information, different values and views that we hold as individuals.

I really think it is an impossible task that I do not think we could do in the time that appears to be available.

1620

Mr. Runciman: I will be very brief. I think Mr. Kanter has really hit the nail on the head. We are talking about consensus. I think this approach Mr. Swart is suggesting is unusual. I suspect it would require a consensus. I think you have noted, Mr. Chairman, that our party does not want to be associated with anything that might be construed as supportive of the principle of this bill, so consensus is out of the question.

I think we are all going to have the opportunity--or at least some of us--during debate in the House. Obviously, there are some submissions that have been made to us where we have some sympathy with respect to changes that perhaps should take place and we will have the opportunity to indicate that during debate. As well as what Mr. Keyes suggested with respect to Ms. Swift's submission, I think that should be adequate. I think we are getting into a real can of worms if we try to come up with some sort of letter. I just do not think it will work.

Mr. Hampton: What I come up against is that we have spent what amounts to three weeks travelling around the province. We have heard all kinds of groups. I do not think we should view this as being a policy document, that we are somehow going to direct the Minister of Financial Institutions (Mr. R. F. Nixon), "This is what you should look at in the future." I think we can come to some agreement, though, that there were some problems we saw out there that should probably be addressed and should probably be looked at by someone. We may not even need to have consensus. We are not trying to direct the minister as to what to do with them.

For instance, we heard of an interesting case in Windsor where a young entrepreneur is interested in the installation of theft alarms in automobiles and the effect that may have. The research assistant indicated to Mr. Swart and I yesterday that this kind of legislation is already in place in certain parts of the United States. They have looked at it. There is probably a legislative record in the United States indicating the kinds of things they have gone through. I think that ought to be drawn to the attention of the Minister of Financial Institutions.

Similarly, we heard two witnesses from remote communities in northwestern Ontario. One has a wrecker capable of moving large trucks off the highway, but the fellow confesses that the insurance rates are very high,

perhaps too high. We heard from another community that does not have wrecking services and where the highway has been blocked for up to six hours because of it. It is because insurance rates are too high. That sort of thing should be brought to the attention of the minister. It is not a question of taking what this group or that group may have recommended to us in whatever terms they recommended it. It is looking at the kinds of factual situations that are out there that ought to be brought to the minister's attention because they are problems. It is quite clear they are problems we cannot deal with, but they certainly are problems related to insurance rates and insurance classifications that somebody had better look at.

If we do not draw someone's attention to that, we have only done a small part of our job. We have done the technical part of our job, but I would submit we are here to do other things than just the technical part of our job and go through this clause-by-clause at the end of our three-week study. I think there are a number of things that we saw and heard that we could put together in a letter to the Minister of Financial Institutions that do not require us to engage in long policy deliberations, but that I think we could all agree need the attention of the government and probably need it fairly soon.

Mr. Chairman: There is one point you raised. I asked Mr. Kanter, as parliamentary assistant to the Solicitor General (Mrs. Smith), if he would follow through on an undertaking that I think I made in Sudbury, if I am not mistaken, about looking into the issue of whether there could be some vehicle to allow the Ontario Provincial Police to use those tow trucks.

Mr. Hampton: Thunder Bay.

Mr. Chairman: Was it Thunder Bay? If you would be good enough, Mr. Kanter--

Mr. Kanter: I will do that. Thunder Bay was one of the two trips I missed, but I will undertake to do that and I will consult perhaps with Mr. Hampton who has a clear interest in that subject. We can certainly undertake to do that.

Mr. Chairman: Are there any further comments on Mr. Swart's motion? You have a wrapup, Mr. Swart.

Mr. Swart: Yes, as long as the others do not want to speak; I do not want to jump in ahead. I just want to agree up to a point with what Mr. Keyes has said, that we have a very valuable document there. I want to point out, though, that the document does not express any opinions of this committee about anything. I am not at all convinced that we do not have some views here in this committee that would be valuable views from this committee to do with the submissions we have heard. After hearing all the submissions and asking questions, I think we have some views that will be useful to the minister and to the ministry. We may get bogged down on some and cannot reach agreement on some of those I have mentioned. I just threw those out as examples.

I want to point out that this is the first group of MPPs that has travelled the province as a committee of the Legislature on this issue. I suspect the MPPs here now collectively are more knowledgeable about auto insurance than any of the other members of the Legislature with perhaps a few exceptions, people who have been ministers or parliamentary assistants before, and I think we have a role to play in making those views known to the minister or to the ministry.

I have heard Mr. Sola on two or three occasions say that the money which is going to be lost from reducing the premiums on young males should be spread evenly. There may not be unanimous support for that, but certainly I feel strongly about imposing most of this on the young females as is in fact proposed, not in the legislation but in much of the other documentation. In addition to saying, "These are areas we think are important and you should take a further look at," we might be able to come to some agreement on some principles that we would think should be embodied in the classification system.

Mr. Chairman: I think we have had fairly significant debate on this. I will put the motion.

Mr. Swart: Are you counting the vote?

Mr. Chairman: I am counting the vote, Mr. Swart.

The committee divided on Mr. Swart's motion which was negatived on the following vote:

Ayes 3; nays 6.

Mr. Chairman: Mr. Swart, you were in the course of waxing eloquent on that section. Do you wish to continue?

Mr. Swart: I am not sure what we have yet to do tomorrow. I do intend to speak for perhaps 15 or 20 minutes more. I do not know what other people want to speak on this. I am in your hands. If you want to stay tonight and finish this off so we do not have to come back tomorrow--

Mr. Chairman: I do not really get the choice. There are other things we have to do tomorrow. There is section 32a, which was postponed.

Mr. Swart: It is 4:30 p.m.

The committee adjourned at 4:30 p.m.

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J-21

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ONTARIO AUTOMOBILE INSURANCE BOARD ACT

THURSDAY, FEBRUARY 4, 1988

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

McClelland, Carman (Brampton North L) for Mr. Chiarelli

McLean, Allan K. (Simcoe East PC) for Mr. Cureatz

Runciman, Robert W. (Leeds-Grenville PC) for Mr. Sterling

Swart, Mel (Welland-Thorold NDP) for Mr. Farnan

Clerk: Mellor, Lynn

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Revell, Donald L., Legislative Counsel

Witness:

From the Ministry of Financial Institutions:

Nixon, J. Bradford, Parliamentary Assistant to the Minister of Financial
Institutions (York Mills L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, February 4, 1988

The committee met at 10:26 a.m. in committee room 1.

ONTARIO AUTOMOBILE INSURANCE BOARD ACT
(continued)

Consideration of Bill 1, An Act to establish the Ontario Automobile Insurance Board and to provide for the Review of Automobile Insurance Rates.

Mr. Chairman: We will resume. Perhaps the first item to deal with is that legislative counsel was going to reconsider his opinion overnight, in view of two opinions. I am going to ask him to read to you the notes he has with reference to that before we proceed. After he does that and after we deal with that matter, we have section 33a, which Mr. Swart was in the middle of speaking to, then section 34. Then we should be finished, if you would like to put that on the record.

Mr. Revell: Sorry for the delay. Yesterday, in the heat of battle, we started off with a procedural problem. Legislative counsel are not the procedural advisers to the chair, but we do have a role in advising on what the legal effect of particular provisions are, so that the procedural advisers can then apply the normal procedural rules to the legal issues.

Overnight, we analysed the motions and the bill as carried to this stage. We can start off by accepting that yesterday afternoon section 31 was carried by this committee. Section 31 provides that "In the event of conflict between this act and any other act, except the Human Rights Code, 1981, this act prevails."

Mr. Swart then moved a motion that provided, "Despite section 21 of the Human Rights Code, 1981, no insurer shall discriminate or make a distinction, exclusion or preference in a contract of automobile insurance on the basis of age, sex, marital status or handicap."

The issue arose as to whether this was in order. In the initial approach, it was to overlook the effect of having already carried section 31 with the "except the Human Rights Code, 1981," clause, which appears in that section.

On that basis, it was initially decided that section 32a was in order. We subsequently, as you may recall, had a coffee break and during the coffee break certain procedural advice was received by the chair and by Ms. Mellor respecting the interrelationship between section 31 and the proposed amendment. It was decided at that point--Actually, I have to ask a question here. Was the ruling given or was it a tentative ruling that had not been--

Mr. Chairman: The ruling was given, and I changed the ruling because of a question that was asked by Ms. Poole that directed my attention to the fact that section 31 had been passed, in which case, on the legal opinion you gave us at that time, that it was out of order, I changed my ruling.

Mr. Revell: The next issue, though, that arose was that we did have some more discussion on the issue and Mr. Swart wanted me to reconsider the position with respect to this. I have read to you section 31 and I have read to you the proposed motion. It is the "despite" clause that is causing the problem. That is the provision that says, "Despite section 21 of the Human Rights Code...." On its face, these words appear to attempt to override section 21. If they do override section 21 of the Human Rights Code, they would have the effect of removing a defence to a proceeding under the Human Rights Code. In other words, section 31 has just preserved the Human Rights Code; the proposed amendment turns around and purports to override that and say there is no defence. That is on the face of the legislation as drafted.

I submit that the purpose of Mr. Swart's amendment appears to be in aid of the enforcement of Bill 2. I think that is a safe summary of the remarks Mr. Swart made yesterday afternoon. I believe, on the basis of my examination of the provision of the provision, that is its substantive purpose. However, if the "despite" clause does truly override section 21 of the code, then we are at law making a statement that is contrary to section 31 of the bill.

Mr. Keyes moved the deletion of the "despite" clause. It is up to the chair to rule on these issues, but the question would arise, can you amend an out of order motion to bring it into order? I think not. The only way to proceed would probably be to start over again.

Anyway, on the face of the motion, as it would have been amended--and I will not deal with whether there is another motion--by Mr. Keyes' submotion, there is no conflict with the code because the "despite" clause has gone. So on the face of motion and on the face of section 31, as it reads, there is no apparent conflict.

Just to summarize what the code does--and I am sure we are all aware of it--in simple terms the code provides that all citizens of Ontario have a right to equal treatment with respect to services and a right to contract on equal terms without discrimination because of age, sex, marital status, family status or handicap. The code is a self-contained enactment and it includes its own enforcement mechanisms. Section 21 of the code provides insurers with a defence in proceedings brought under that act. It does not appear, in my opinion, to create defences to proceedings brought under any other act, just as it does not create any rights of action in tort.

Bill 2, on the other hand, creates a legislative scheme affecting only auto insurers in Ontario. It too is a self-contained code and it contains provisions providing for substantial fines for a contravention of the bill. As noted before, the motion is in aid of enforcement. If included in the bill, insurers would not be able to discriminate as a way of avoiding rate compliance, i.e., they would not be able to get into avoiding issuing policies to young male drivers or handicapped drivers or whatever.

On my analysis of this, if I am correct--and I believe I am--both the code and the bill are free-standing, self-contained statutory schemes, one dealing with civil rights and the other dealing with a regulatory scheme for an industry. It may very well be open for an insurer to argue in court that section 21 ought to provide a defence. I am not saying that you cannot raise those arguments in court. I am saying, though, that it is one thing for a judge to consider at the appropriate time.

On the other hand, I think it would be open to the prosecution--and the prosecution would have a very strong argument--that this later, specific legislation dealing with a different issue is good legislation and is to be interpreted as part of the enforcement scheme of this particular bill. Therefore, section 32a, as Mr. Keyes proposed to amend it, is not affected by the code and therefore the two provisions can live side by side.

As I say, I am not giving procedural advice as to the effect of Mr. Keyes' motion. I will leave those issues to the chair.

Mr. Chairman: We have had additional information. I learned that this morning. The matter is nondebatable. The essence of that is that my ruling with reference to Mr. Swart's original amendment is that it is out of order and the effort by Mr. Keyes to amend it is out of order because you cannot amend something that is out of order. That is where we stand at the moment. I am not changing my decision.

Mr. Runciman: For once, let us not have debate on it.

Mr. Chairman: That is right. Mr. Swart, I am not going to entertain debate on it. If any member wishes to move something different, that is fine.

Mr. Swart: I do have a point I wanted to make. Unfortunately, my copy of the motion was taken to be duplicated.

Mr. Chairman: Mr. Swart moves that the following section be added to the bill:

"32a. No insurer shall differentiate or make a distinction, exclusion or preference in a contract of automobile insurance on the basis of age, sex, marital status or handicap."

Mr. Swart: I am not going to speak at length on this. Incidentally, I should say immediately that there is another motion I can move after we deal with this, which pertains to the effective date that this should come into operation. I am just going to speak very briefly.

I am not going to be abrasive in my comments because I think I see a light at the end of this very long tunnel, and I would not want to do anything to put that light out. I am pleased that we have got the ruling that we have and that we come to the point where we are, hopefully, going to insert this in the bill.

I can recall, for the last eight years at least--and the parliamentary assistant reminded me of this yesterday--that we have had promises that insurance rates based on age, sex, marital status and handicap would be abolished and it was going to be dealt with immediately. I remember Frank Drea--you may remember that, Mr. Runciman--making that flat commitment, and it has gone on and on and on. If we get this in today, I think this will be a red-letter day against discrimination in this province on those bases.

The facts are, as I pointed out yesterday, that good young drivers, male or female, I think we all agree, should not be discriminated against, and to have this in the bill is a very major accomplishment. I believe it is fundamental to the bill, one of the major purposes of this bill, even though it may have been done in another direction. To have this incorporated right in the bill will be a major accomplishment. Everyone here knows that right from

the beginning that is something I have been hoping could be accomplished during the hearings on this bill. We may almost be there now, and I hope I am not being too optimistic. Those are the only comments I will make on this.

Mr. Runciman: I want to endorse the comments that were made to the committee by the chairman of the Human Rights Commission, who did not recommend this course of action and, in fact, urged the committee to take the direction of amendment to the code, supported initially by the government and then through an effort in an amendment here to amend the code. I still think that is the appropriate way to go.

I think this is a bad precedent. We have had a variety of legal opinions over the past two days, and I think it is open to challenge again. I respect the opinion we have received this morning, but I still think the question is somewhat up in the air. Again, I think this is an inappropriate way to handle this question. This is directly from the chairman of the commission who also indicated that, in his view, this is an inappropriate way to deal with this matter. I want to go on record as being supportive of the chairman in his position before this committee.

Mr. Chairman: Ms. Poole.

Ms. Poole: Actually, Mr. Chairman, I am prepared to give way to Mr. Keyes. I think he had a comment first.

1040

Mr. Keyes: I have a small amendment to make to the motion that I would just ask to be included. In section 32a, as previously read, following the words "marital status," we also use the term "family status."

Mr. Swart: I would accept that as a friendly amendment.

Mr. Keyes: Merely from the technical point of view that there are different situations of family status which are not covered by the term "marital status."

Mr. Swart: We have skated around with a lot of procedure. Perhaps I should have incorporated another section in this motion and I would be glad to remove this motion.

Mr. Chairman: That is the only way I think you are going to do it, because otherwise I think we are going to need unanimous consent, on the basis of what Mr. Runciman has said. Thus far, I do not think you--I do not know. I do not want to speak for you, Mr. Runciman.

Mr. Swart: Could I ask that we have consent to withdraw that motion and I will remove it?

Mr. Chairman: I think you also require unanimous consent to withdraw. I may be mistaken. You are in a bit of a bind, I think, gentlemen.

Mr. Keyes: I could simply move the motion on the amendment I have put in.

Mr. Swart: Perhaps Mr. Keyes would like to move an amendment which--

Mr. Keyes: I have just moved the amendment, which would include the words.

Mr. Swart: Rather than having me move a motion, it might be preferable to have you move this, so it would be subsection 32a(2) to my motion.

Mr. Chairman: I do not think you are being recorded on Hansard, Mr. Keyes.

Mr. Keyes: I want to just do the first officially because you may not accept that as a friendly amendment.

Mr. Chairman: Mr. Keyes moves that "family status" be inserted in 32a of the amendment following "marital status."

Does anyone wish to speak on the amendment to the amendment?

Mr. Swart: I would just say that it improves the motion and therefore I am supportive of it.

Mr. Kanter: I support the objective of Mr. Swart's amendment. However, I am perhaps a little confused, after the various interpretations we have had the past couple of days. I am still concerned and perhaps my concern might be alleviated by comments by Mr. Nixon or others about the relationship this clause would have, if adopted, with the existing Human Rights Code.

My understanding is that the Human Rights Code is a separate, free-standing sort of code that not only deals with the subject of prohibition against discrimination, but has an enforcement procedure; it has personnel who are very familiar with human rights legislation and problems to enforce that procedure.

My question is, by putting what I might call similar, even if compatible, language into this bill, whether legal problems might be created in the interpretation and enforcement of this very useful and desirable antidiscrimination legislation. I want to be very clear and distinguish myself, I think, from the approach of Mr. Runciman, who may have some questions about the validity of this approach, the validity of antidiscrimination measures with respect to car insurance. I support that. I am still not sure whether there would be any problems of compatibility if we had this provision in this legislation as well as the existing Human Rights Code. Perhaps either Mr. Nixon or perhaps even someone else might be able to help me.

Mr. Chairman: I do not think it rests with Mr. Nixon to do that. Legislative counsel has read to you what his legal interpretation is, and you would agree or disagree with that, I guess.

Mr. Kanter: I would have asked the question at that time but there was some indication that it was not debatable. Perhaps I more properly should have addressed a question to him. Perhaps, with your indulgence--

Mr. Chairman: That part was not nondebtable at all. The only part that was nondebtable was my ruling.

Mr. Kanter: Perhaps you would permit me then, Mr. Chairman, to direct that question to legislative counsel.

Mr. Keyes: On a point of order: In terms of parliamentary procedure, could we get rid of the little amendment to the amendment? That is what you should be dealing with now, the amendment. Mr. Kanter's point is not directed to that at all. I submit to you we should get on with the a little "family status" addition.

Mr. Chairman: With respect, Mr. Keyes, Mr. Kanter's question is directly related to it because he wants that information before he votes on either the amendment or the amendment to the amendment.

Mr. Kanter: I have no problem with the amendment to the amendment.

Mr. Keyes: It is in your hands.

Mr. Swart: On a point of order, Mr. Chairman: With Mr. Keyes's motion, we do have an amendment to the amendment. That having been moved, the discussion should be on that now. Then we go to the amendment as amended and then anybody can take part in the debate and move other amendments.

Mr. Chairman: I assumed the discussion by Mr. Kanter was on the amendment to the amendment, because that is what I asked for discussion on. If that is not the case, if you are not looking for questions from legislative counsel on that point, I would agree to proceed with the amendment to the amendment. But I assumed, when I asked for questions on the amendment to the amendment, that is what you were speaking to.

Mr. Runciman: I would hate to be reading Hansard after this.

Mr. Chairman: Is that right?

Mr. Kanter: My question relates to the entire amendment, not just the amendment to the amendment. I have no difficulty with voting on the amendment to the amendment at this time.

Mr. Chairman: I understand that you are speaking to the entire thing. Then I think you should ask legislative counsel before we deal with the amendment to the amendment.

Mr. J. B. Nixon: I would just like to make one quick comment as to the value of the amendment. The value of the amendment is that the new provision, if passed, section 32a in the auto insurance board bill, will reflect word for word the grounds given for an exemption in section 21 of the Human Rights Code. In other words, section 21 of the Human Rights Code says "family status." We believe it should be in this provision too.

Mr. Chairman: Mr. Kanter, you wanted to get some clarification from legislative counsel.

Mr. Revell: I am not sure exactly where the question was going. Is the question that we are potentially creating problems of interpretation?

Mr. Kanter: Interpretation and enforcement of breaches of this section, which, while it may reflect the same wording as the clause in the Human Rights Code, is in a different section with a different enforcement mechanism and different personnel responsible.

Mr. Revell: I attempted to address that issue in the opinion that I gave. It would, I think, be open to a defence counsel to argue that in a proceeding under Bill 2, the code provision ought to prevail. I do not think there is any question about the fact that you can argue whatever you want in court and, if the judge will listen, it may be that you have to go to the next level of court, but that is an entirely different issue.

First of all, let us start with the Human Rights Code. The Human Rights Code, as I said, creates its own specific statutory enforcement scheme. We start with inquiries and investigations and then, if that does not resolve the issue, we go on to a board of inquiry and the like. So it is a completely self-contained code.

If somebody brought an application under the Human Rights Code with respect to discrimination, it is my opinion that this new provision would not protect, would not assist the person in a proceeding under the Human Rights Code.

I will give you an example, Mr. Kanter. A handicapped person complains that he cannot get insurance. He goes to the human rights commission and says, "They are discriminating against me because I am handicapped." An investigation is held, it goes on to the board of inquiry stage, evidence is led that the reason Mr. X or Ms. X cannot get auto insurance is having regard to the nature of this handicap--I should not say he cannot get insurance. I think it would more likely be a basis of rate discrimination. They are going to charge an extra \$1,000, and they lead evidence to show that everybody who suffers from this particular handicap has an accident every six months. I think there might be reasonable grounds there for relying on the defence in section 21.

It is my submission that Mr. Swart's motion does not affect that defence under a Human Rights Code proceeding. It relates only to the enforcement of the new legislation, and this new legislation is not enforced before the board but it is enforced by virtue of section 26 as a provincial offence in provincial offences court.

1050

Mr. Kanter: Suppose a blind person applied for insurance and was denied insurance, would he not have a remedy under section 26 of this bill without the "reasonable" provision that is contained in the Human Rights Code?

Mr. Revell: The issue becomes one of, would an insurance company be required under any basis to insure a person who cannot get a driver's licence in Ontario? The example that you give is an extreme example, but I submit that there are classes of people who cannot pass the licensing requirements of Ontario or, if certain conditions arise after they get a licence, their doctors are under an absolute obligation to report that to the registrar of motor vehicles. The threshold is surely one of once you are within the scheme--i.e., a licensed driver--ought you to be able to get insurance? I do not know whether that clarified the issue, but I am saying this is a provincial offence we are creating here.

We cannot stop anybody from arguing whether in a provincial offence you can raise section 21. It has been decided, though, that you cannot raise sections 1, 2, 3, 4, 5, 6, 7 or 8 of the Human Rights Code in a tort action. I think that is the Bhaduria case--I cannot remember now for sure, but there

was a case that decides that the code does not create new rights of action in tort. If it does not create new rights of action in tort, I submit that it also cannot be used as a defence in proceedings created under very different regulatory schemes.

Mr. Chairman: Mr. Kanter, does that assist you?

Mr. Kanter: It assists somewhat. I am still a little concerned. I think there is a provision in the Human Rights Code, but I am not familiar enough with it perhaps. I think section 21 has a "reasonable and bona fide" clause which is not present here.

Mr. Revell: It is in section 21. That is exactly right, but that is a different issue.

Mr. Kanter: Yes, it says "on reasonable and bona fide grounds."

Mr. Revell: That is the defence to an action or a proceeding brought under part I of the code. Part I sets out the rights. Then rest of the act goes to exceptions and defences and then goes on from there to enforcement.

Mr. Kanter: I think I understand then that the reference "on reasonable and bona fide grounds" is just a defence to those provisions under the Human Rights Code.

Mr. Revell: That is my submission.

Mr. Chairman: Are there any further speakers on the amendment to the amendment?

Mr. J. B. Nixon: I would like to make a comment from the point of view of the government. Our preferred way of proceeding is by way of amendment to the Human Rights Code. In any event, it seems that this amendment may create some legal questions. However, I would make two comments. We expect that this provision will not be effective until the date of proclamation of certain sections which transfer responsibility for setting the classification system to the board, in other words, not on the date of proclamation of the bill.

The reason for that is there are lots of insurance companies out there right now writing insurance policies, which use the variables of age, sex, marital status, family status and handicap--perhaps not handicap. That being said, there is no way we can proclaim this effective March 1 or February 11 or anything like that, or else all the insurance companies would have to stop writing insurance. So it cannot be effective until a later date when the classification system has been finalized and the board commences using it.

The government has stated its intention. On April 23 the minister stated his intention at the opening of public hearings, and I have reiterated that on behalf of the minister, that is, the intention to amend the Human Right Code. We expect to have the opportunity to do that in the spring session. Once we amend the Human Rights Code, we will at the same time amend this bill to delete section 32a.

If we follow that course, that will be, frankly, a moral statement but never have the legal force and effect that would lead to the type of debate that legislative counsel has alluded to. So it is, if I may suggest, a moral statement about the government's beliefs.

Mr. Runciman: I just want to take issue with that. I do not think it is a moral statement. I think it is a public relations ploy, a further sop to the New Democratic Party and, as I said before, a bad precedent for any committee.

Mr. Chairman: Is there any further discussion?

Mr. Swart: This is much more than a public relations ploy, even if you want to attribute that to it.

Mr. Runciman: You are defending the government again.

Mr. Swart: If something happened--

Mr. Runciman: You cannot get out of old habits.

Mr. Swart: I think I have the floor.

Mr. Chairman: Interjections are out of order, and Mr. Runciman knows that.

Mr. Runciman: He is getting a little bit of his own medicine.

Mr. Swart: If something happens and the Human Rights Code is not amended, for whatever reason, prior to the coming into force of the classification system, the operation of the bill, we have it in the bill. I think that is a pretty important principle to have right in the bill.

Mr. Chairman: If we keep talking on it, I suggest it may not be in the bill. We have had full discussion on this. I think we will now vote on Mr. Keyes's amendment to the amendment, that the words "family status" be inserted immediately after the words "marital status."

Shall that carry? Carried.

Shall Mr. Swart's amendment, as amended by the amendment of Mr. Keyes, to section 32a carry? Carried.

Mr. Chairman: Mr. Swart, as I understand, you were in full flight.

Mr. Swart: Can I move another amendment to the--

Mr. Keyes: I was going to move an amendment there.

Mr. Swart: OK.

Mr. Chairman: Mr. Keyes moves that the following subsection be added to section 32a of the bill:

"(2) Subsection 1 comes into force on the day named in the proclamation under subsection 29(3)."

Is there discussion on that amendment by Mr. Keyes?

Mr. Keyes: I believe it is the very same thing.

Mr. Chairman: Shall it carry? Carried.

Section 32a, as amended, agreed to.

Mr. Chairman: As I recollect, Mr. Swart, you were involved in the discussion of your amendment, section 33a.

Mr. Swart: Yes. I will not take a great deal of further time on dealing with section 33a. We explained yesterday that the fundamental purpose of this is to recognize that the only real solution to our auto insurance problem is a publicly operated system such as they have in the western provinces. It is the intent, in effect, to assert that principle in this bill. That is what we are working towards, and we use the only means that we can to do that.

Yesterday I dealt with the issue of the public system's providing a better product. I think that has been demonstrated in the hearings, and I had quotes on that. I dealt with the matter of cheaper rates in the western system, and I think it has been demonstrated conclusively that they are substantially cheaper, in spite of the fact that they have more accidents. Those cheaper rates are documented by our own research--nothing is absolute on this--and the Gore Mutual Insurance Co.

I mentioned that it is so satisfactory that where it has been introduced--in the case of Saskatchewan, 41 years ago; 17 years ago in Manitoba; 15 years ago in British Columbia--it now has the support of all political parties and even the full support of the brokers, who were nonsupportive of the governments that introduced it.

1100

Yesterday I was part-way through reading the comments of Mike Bessey who, as we know, appeared before our committee as a representative of the Conservative Party from Manitoba. Although there is a demonstration out there, as I read yesterday, he admitted that the Conservative Party is not asking that the Autopac be dissolved and the whole matter of insurance be referred to the private sector. In fact, he was quite specific that would not be the case.

I am not going to read over what I read yesterday, but just a couple of answers he gave. I said to him: "What you are saying, in effect, is the principle of Autopac is good. It provided good service. The principle is good. It has not been well run. Is that what you are saying?"

Mr. Bessey, who was speaking officially for the Conservative Party of Manitoba, said: "What I have said is that it is institutionalized"--and of course I am reading from Hansard--"and that we would not privatize it." That is what he says.

I said to him, "Are you saying that your party is in favour of Autopac?" He replied, "What I am saying is that the party does not feel it is politically an option to privatize it." That is a pretty frank statement from a person who is representing a political party.

He said: "I say, there is no option. We do not have an option to Autopac." Again I said: "Do you not have the option of privatization, as Thatcher did in England? Would not the people be delighted?" He said, "We do not think so." That was his comment.

I think it is pretty clear, coming from a representative of the Conservative Party, that even that is accepted by all political parties in the west. When he says they do not think the people would be delighted and the people still want it out there, I think that is a clear indication of the acceptance of it and how good it is when they are willing to go against all their philosophy after having fought against it and the rest of it and say: "Now it is a good system. We think that we should keep it."

I just want to say a few words about the savings in those western plans. You all have heard the evidence from Manitoba, from BC and particularly the Saskatchewan annual report, but there is no doubt that the cost of operating the system is far cheaper than it is here in Ontario. There simply can be no doubt about that.

You heard the chairman of the Insurance Bureau of Canada state that we use 36 cents of each premium dollar in total expenses in our system. Those are the expenses of sales, of administration and of settling claims.

You not only heard from the members of the government, but it is all in the annual reports, that in the western provinces that is 23 cents on the dollar. In Saskatchewan, it is cheaper than that. That is 13 cents on the dollar alone. When we have \$3 billion in premiums a year, that means that we are talking about \$390 million of saving. Let us not say that cannot be duplicated here, because you have Saskatchewan, a relatively small, rural province, Manitoba and British Columbia. If anything, British Columbia is the cheapest. When you have a province the size of Ontario, the volume would probably even increase those savings rather than decrease them.

Mr. McLean: How is it compared on a per capita basis?

Mr. Chairman: Mr. Swart has the floor. If you want to answer--

Mr. Swart: I want to answer; I am just not sure of the question that is being asked. I would be glad to work it into my comments.

Mr. Chairman: I thought you might. I think interjections are out of order.

Mr. Swart: I am not sure what he means by "on a per capita basis." I do know whether he means the savings on an automobile or the expense on a per capita basis. What I am talking about is a percentage of the total premiums which are being used in expenses. It is a dramatic saving.

We also know that there is a substantial additional income from the interest on investment. That is all documented as well. In British Columbia, the interest on investment is equal to 22 cents on the dollar. In fact, in British Columbia--and this again is all documented; we heard it and we can read it--they pay out 100 cents on the dollar. They use the interest on their investment. It just about equals the total cost of operating the system. Year after year they pay 100 cents on the dollar of premiums back out in actual payments of claims to policyholders.

We heard evidence here that the interest on investments that the private insurance companies pay was 12.8 cents on the dollar. Even if they put that all back in--traditionally, they do not want to put it all back in. They will say they do not want to put that all back in. They believe they should be able to pay all their expenses on the difference between the premiums and the claims payout. That is traditionally their position. But even if they put that

all back in, it is 12.8 cents compared to 22 cents in British Columbia and 19 cents in Manitoba.

We have another saving there of seven or eight cents, another additional income of seven or eight per cent to reduce premiums. If it is eight per cent of \$3 billion, that is \$240 million. We are talking about savings of well over half a billion dollars to the people of this province by a public system, and I suggest to you that cannot be denied.

Just look at the fees that brokers alone get. According to the Insurance Bureau of Canada, 11.7 cents of each premium dollar is paid out to brokers. This comes from the Insurance Bureau of Canada. I am not sure we should trust all their figures. Certainly, some they have put out to try to attack the public plans in the west have been shot down, and I really mean shot down. Practically all of them have been shot down now.

In Manitoba, it is five cents on the dollar that the broker gets. You heard the broker from Manitoba. Members of this committee heard the broker from Manitoba say that because the system is so much simpler than the one we have here, his income is really better from that than it is from Ontario--and he operates here--where he gets 11.7 cents on the dollar. He figures it costs him more to service that than it does in Manitoba, where he gets five cents on the dollar.

In British Columbia, they get six cents on the dollar. In fact, in Saskatchewan, under the plan they have there--I am not suggesting we have that plan--it amounts to about 1.3 cents on the dollar that the people get for selling. You heard them say it was \$2--or was it \$2.50?--they got on renewals, or \$3.50. I am not saying that is adequate, but by any yardstick, there is a tremendous saving on those fees alone.

Somebody will say, and the question was asked several times: "The system is more efficient. There is no question about that, as far as marketing of the product goes. It is far more efficient than here. But isn't that going to put people out of work?"

1110

Of course, any efficient system will put people out of work, and if you are going to cut costs, that puts people out of work. I worked at the Ontario Paper Co. for 25 years. This relates to this, Mr. Chairman.

Mr. Chairman: I see.

Mr. Swart: I could see you were getting anxious.

When I worked there 20 years ago, we had about 1,400 hourly rated employees. They put in a whole new mill--subsidized by the Ontario government, incidentally, as most of the paper mills were in this province--\$200 million from the public fund to build more efficient mills. But they have 600 employees there now. So the government of Ontario provided \$200 million to the paper mills to become more efficient and the result has been they have laid off all kinds of people.

If we believe in efficiency, if we believe in selling a product at the cheapest possible price, we have to use new technology and new procedures. The end result of this is, we hope, a higher standard of living. That is what this is--a more efficient system.

I have to say that sometimes I cannot cry too loudly over the insurance people saying, "Oh, but you are going to lay off an awful lot of people," because the insurance companies themselves propose a smart no-fault system. Their system will eliminate something like 92 per cent of the cases that can go to lawsuit, and 85 per cent of the lawyers who fight auto insurance cases will be laid off. The insurance companies themselves are proposing something that will cause massive unemployment among the lawyers.

I suggest that if there are these kinds of savings, we have to make a decision. Quite frankly, do we want to give the benefit to the consumers of this province or are we going to back the insurance companies, if it comes down to the final question?

The question also has to be answered, is there satisfaction with the system that we have? You heard from the Consumers' Association of Canada in its report. You also heard from the people in western Canada. The people are happy with it. I do not think there is any question about that. The Consumers' Association of Canada does not leave any doubt whatsoever about how happy the people are out there with the public systems which they have. I want to read to you page 6 of the report of the Consumers' Association of Canada. It says:

"This past June...CAC (Ontario) organized a special meeting of its delegates to discuss consumer experiences of government-run auto insurance with leading delegates from Manitoba, Saskatchewan and British Columbia. The purpose of the meeting was to get a firsthand account of consumer satisfaction and, in particular, the nature of complaints about public auto insurance.

"Leaders of the three western delegations made presentations similar to the format of this panel discussion. There were questions and answers and a full airing of how the system works and how it compared with Ontario. To the surprise of Ontario delegates, virtually all of the feedback was positive. At the conclusion of the meeting, the three western delegates were asked to rate consumer satisfaction as they saw it on a scale of one to 10. One equals very poor and 10 equals excellent. To the surprise of the Ontario delegates, the average rating for the three provinces was nine."

Mr. Chairman: Mr. Swart, I have to rule that under the standing orders you are not entitled to read ad nauseam--and I do not use that in a derogatory way--from reports.

Mr. Runciman: Filibuster.

Mr. Chairman: No, I do not think it is a filibuster.

Mr. Swart: No, it is not a filibuster.

Mr. Chairman: I think the gentleman is very enthused about the point he is trying to make, but with the greatest respect, Mr. Swart, I have not called you to order. According to the standing orders, you are not to speak twice to a question. You have spoken twice and perhaps even more than that.

The amendment before this committee is that the act be repealed 12 months after the day on which automobile insurance goes public. I would like to bring you back to that position as opposed to continuing to repeat what you have said throughout these hearings. We accept that. I am not going to stop you, but I hope that you would keep that in mind.

Mr. Swart: I will not bother reading the last two sentences; I had only two more sentences to read here. But I do want to point out that much of our hearings did relate to public auto insurance versus the private system. Therefore, I do not think it is out of order. I just want to point out that the Ontario branch of the Consumers' Association of Canada is now taking another look at the western plans to see if it may be passing a resolution to support them at its convention.

Mr. Chairman, I am conscious of what you are saying, but just before I conclude, I do want to point out that all of the arguments that were put up during the last election--statements that were made in the pig ads and the leaflets that were distributed by the Insurance Brokers Association of Ontario--have now all been totally demolished.

Some of you people were there and heard the president of the Insurance Brokers Association of Ontario. Although they said in their leaflet during the election campaign that the government auto plan of Saskatchewan was handed \$72 million, he now admits that the auto plan was not handed that at all, that it went to crop insurance. It went further than that. I think you know more about it than he does, but it never did go into auto insurance.

They say here that those auto insurance crown corporations pay no taxes. Yet when we questioned him on this and pointed out that they all pay the same taxes as they do here when it comes to property taxes and when it comes to premium taxes they pay the same as the public system, he admitted he could not deny that. No question, he could not deny it.

When it comes to saying that Manitoba had subsidized--that is the word they used--its system by \$18.6 million, they had to admit that that was a special premium that was used for three and a half years, two cents a gallon on gasoline tax. It was not any subsidy from general government revenues at all.

You will know that Co-operators, in the letter which it had sent out, said those plans in the west have no greater level of no-fault than our system does in Ontario. Then you have the broker from Manitoba come down here and say it is far superior to Ontario's. The figures show, of course, that it is. Their limits are far greater than they are here.

Every single one of those arguments that were used during the last election campaign have now been either admitted or proved beyond a shadow of a doubt; there is no person in this room who was at our hearings who believes those statements that they made anymore. Simply, they have been totally demolished.

I just want to conclude--and nobody needs to applaud--by saying that those hearings we had did very largely turn into the faults of the Ontario system versus the public systems of the western provinces. I think that was the key item, the biggest item of discussion in those hearings. It was not the present bill that we have versus the status quo that we have at the present time. That was not what the discussion was mostly about. The discussion was mostly about the system that we have here, or what we propose, versus the system they have in the western provinces.

There is no solution in the rate review board. It is not going to solve the cost problem. Again I suggest to you that after these hearings nobody here thinks the rate review board is going to solve the cost of auto insurance to

the people of this province. There will be an improvement, I suggest, on the classification, especially after what we passed today. That is a valuable exercise on that, but there is not going to be any saving.

There is even the real likelihood that this will bring about dramatic increases. I want to point out here that, as you know, the insurance companies say they lost \$330 million in 1986. They are saying they lost money last year; we will see when the final figures come out. They claim they lost something like \$550 million in 1985.

Is the new system going to assure they are not going to lose any money? If it is, then it is going to dramatically increase premiums, is it not, if what they say is correct, that they are losing that kind of money?

Even the reclassification does not solve all of the problems. It does not do anything about 200,000 drivers, or whatever the number is, driving around this province without insurance, as a public system solves that. It does not do anything to provide adequate coverage for everyone, although I admit we are going to have the Osborne report submitted before long.

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I simply say that what we are doing with Bill 2 is really tinkering with a broken-down system that cannot deliver fair auto insurance, putting a patch on here and there, making some improvements, especially in the classification system. What we really have to do is change the system. That is what this motion is all about: to recognize that there is no real solution in the long run other than going the driver-owned public route. That is the purpose of this amendment.

Mr. Chairman: Are there any other members who wish to comment on this amendment?

Mr. Runciman: I want to compliment you, Mr. Chairman. I am not a regular member of this committee and I take this opportunity to compliment you on the way you have conducted the hearings. I think you are doing quite well. You have not had the kinds of difficulties I faced as chairman of the standing committee on public accounts.

Mr. Swart: He has had all nice people.

Mr. Runciman: I lost my cool with Mel once in a while. I guess I am the only one. I have a bit of a short fuse. Even then, I feel badly after I do it. I do not know why. Maybe it is the grey hair; I am not sure. We all hold Mel in some degree of affection.

Mr. Swart: Whatever the reason, I am glad you feel badly.

Mr. Runciman: He mentioned at great length the Manitoba representative, and I wanted to just make some comments in respect of that; I think I should. I could not be here for that testimony, but I am not surprised by what he said. We talked about Mr. Swart's motion. I described it as prophetic. Mr. Keyes suggested another adjective, "pathetic." I appreciated that coming from Mr. Keyes, because I think he is one of the small-c conservatives in the Liberal caucus. He may not be prepared to admit that.

Ms. Poole: Nobody wants to be a Conservative these days.

Mr. Runciman: Well, I am not going to deny that. It is a pretty small caucus.

Mr. Swart: You are really proud of that, are you not?

Mr. Chairman: Let us leave the classification to the classification board when it is set up.

Mr. Runciman: In any event, and I say this quite sincerely, as an eastern Ontarian, I was quite sorry to see Mr. Keyes leave the executive council, because of his small-c conservative nature, his business background and the input he had in the decision-making around the executive council table. We know decisions such as Bill 2 are being made around that table. I think the government has gone too far and is going down the path Mr. Swart is suggesting is going to happen by the wording of his motion.

As I have said on a number of occasions, the really key players around the executive council table now are people who are quite comfortable with the thinking of Mr. Swart and some of his colleagues.

Mr. Swart: I wish that were true.

Mr. Runciman: Well, I have said this and I will repeat it. We have had the Treasurer (Mr. R. F. Nixon) saying during the Bill 2 debate that public auto insurance was not anathema to him; he did not find it offensive at all. We have had the Attorney General (Mr. Scott) complaining about the free trade bill limiting the government's ability to intervene in the private sector, and he specifically mentioned its ability to establish a public auto insurance program in Ontario. I think that is indicative of what some of the key players in this government are thinking.

We talk about Mr. Bessey from Manitoba. Mr. Swart was very gleeful about his comments, but those comments did not surprise me because I understand that. I think they reinforce the position I took early on in this debate, that once you get into this quagmire, politically it is darned difficult to escape it. I have used rent control as an example. We have run into all kinds of difficulties. The government has just spent over \$3 million to tell it that rent control is not a good policy. Politically, it is difficult to extricate yourself from that quagmire. That is what it is, a quagmire.

I heard something on the radio this morning. We had one of Toronto's prestigious aldermen, Dale Martin, and I say that facetiously, an NDP alderman with a group of renters saying: "Look, we are not happy with the way rent control is going in this province. Now we are going to come in with legislation that will give you the opportunity to refuse to pay rent." You go from one mess to another mess if you follow their lead, and that is what you are doing in this instance.

Mr. Rae, who was very much against extra billing, now that we see the medical costs going up, was on the radio this morning saying, "Well, maybe we've got to come in with fixed salaries for doctors." It is one mess after another mess.

You are going down that path, and what you are establishing here is really a bureaucratic nightmare. As Rosemary Speirs said in her column a couple of weeks ago, which I think really hit the nail on the head, you are not pleasing anyone with this legislation, except perhaps the NDP thinkers who

know where it is going to all lead. You are not going to please the insurance industry and you are not going to please the consumers of this province because you are not really coming up with any resolution of the very valid concerns that are out there.

The NDP members can say they are opposing this, and obviously they are going to vote against it, but there has been a lot of posturing. We notice that in virtually every motion that has come before us, ultimately the NDP is voting with the government.

We have made a point of voting against every motion, every amendment, so that there is no hint of support for the principle of this bill and what it is going to mean to taxpayers and consumers across this province. We think every result of this is going to be negative.

I just want to put a couple of things on the record. We had a report tabled with the committee this morning, a study of the Massachusetts system. I have just had a cursory look at it, but I think some of the comments should be placed on the record.

On page 21: "Massachusetts has a serious availability problem of auto insurance. Massachusetts's premium is \$77.31 greater than the national average. Considered by itself, the rate regulatory system has no measurable effect on premium levels."

Page 39: "There are ominous signs that the present market for auto insurance is breaking down." This is Massachusetts, which is one of the few jurisdictions that has a system comparable to the one this government is introducing here. "Since 1973, the size of the residual market has increased in relationship to the voluntary market by 900 per cent. This is a definite sign of an inability of the auto insurance market in Massachusetts to attract needed and productive capital. During the same period, policyholders have suffered as premiums have increased by more than 46 per cent, substantially greater than the national average increase.

"Reviewing the comparative market evaluation presented in this report, Massachusetts has one of the highest premiums in the nation, has one of the poorest records of auto insurance availability and continues to provide inadequate premiums to most auto insurers. Change is obviously needed. The present method of regulating the auto insurance market in Massachusetts is working poorly for all concerned participants."

As I said, this bill, in my view, is doomed to failure and it is going to create the kind of environment that the NDP feeds off. They are going to be criticizing every move you make, every rate increase, every classification move you make. You are playing into their hands again. What this is eventually going to mean is that you are going to throw up your hands and say: "This doesn't work. The next obvious step is government auto insurance."

It is a very clear message that we want to put out there. Ms. Speirs said that quite a number of the Liberal caucus also feel this way but they are not voicing their opinions or they are not sitting on this committee, and she has a pipeline into the Liberal caucus and the Liberal government, there is no doubt about that.

Mr. J. B. Nixon: I thought she had her pipeline into our decision-making.

Mr. Runciman: She does that as well. I know who the pipeline is, as a matter of fact. I will tell you after. In any event, Mr. Chairman, I simply wanted to put those comments on the record and also again extend my compliments to you. I have enjoyed sitting on the committee with your chairing it.

Ms. Poole: Mr. Chairman, I am aware of the resigned look on your face, so I shall particularly promise to keep my remarks brief. I just felt that particularly some of Mr. Swart's comments could not go unchallenged. I shudder to think that the people of Ontario would believe that Mr. Swart's comments reflect the opinions of even some of the members of this committee, let alone all of us.

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Mr. Chairman: Try not to evoke a response, if you can help it.

Mr. Swart: Thank you, Mr. Chairman.

Ms. Poole: I think you have already commented that members are not allowed to speak twice on the same subject, so I feel quite safe at the moment.

Mr. Swart commented that the committee has seen that the government-run auto insurance plan is definitely superior. Maybe certain members of the committee have seen that. I suspect they are two in number, and they may just happen to be the New Democratic Party colleagues. I can certainly assure you that I am one member who has not seen that superiority.

Mr. Swart: None so blind.

Ms. Poole: In fact, we have heard of a government-run system that is riddled by political interference. We have heard of enormous rate increases in nonelection years. Mr. Swart has been quite free in quoting Mr. Garriock's comments. I will give you a few examples.

He said that Mr. Garriock told us that the product in the government-run system is a good product. What he failed to say was that Mr. Garriock also stated that in Manitoba they paid too much for the quality they received.

Mr. Swart also referred to Mr. Garriock's statement that the system was simpler so they needed less staff. He did not go on to Mr. Garriock's elaboration that he felt the staff of the government-run auto plan in Manitoba were not professionals and did not have a great understanding of the insurance business. In fact, Mr. Garriock felt this was a failing.

We have heard comments by Mr. Swart about the 11.8 cents in premiums that go to brokers' overhead and commission. Mr. Swart has not yet indicated what he plans to do with the 12,000 unemployed workers in the insurance system in Ontario should we decide, heaven forbid, to go to a government-run system. I think that pretty well tells you where I am coming from, Mr. Swart.

He has also ignored the two pages of testimony by Mr. Garriock on the defects of the Autopac system. I know you feel, Mr. Swart, that the rate review board will not solve the problems of cost in insurance, but I submit to you that Manitoba's example has shown us that the Autopac system, government-run auto insurance system, will also not solve that problem.

I would like to congratulate Mr. Swart on his participation on this committee. I feel he has given us a great deal of his expertise and certainly his enthusiasm. I do not doubt for a moment that he has very firmly held convictions and, in my opinion, he has substantially strengthened Bill 2 with his input. I just wanted to make it perfectly clear that I do not agree with him, but I do thank him for the contribution.

Mr. Chairman: It is nice to end on a high note.

Mr. Swart: That is the same thing the Liberals were saying in Manitoba 20 years ago.

Mr. Chairman: I almost feel as if I am about to tie the knots of a wedding here or something. Do any other members have comments?

Mr. Hampton: I could not let Ms. Poole's remarks go by without commenting on them--

Mr. Runciman: You can quote some of mine.

Mr. Hampton: --and some of those of Mr. Runciman as well. In my view, it is interesting that, at the end of all this, at the end of a bill that has taken a considerable amount of work, that I should agree with Mr. Runciman on many things he said. I think I can speak for Mr. Swart on this too.

We think the bill and the strategy the government has chosen are fundamentally flawed. If I can point to a model I think this will look like--and Mr. Runciman did point to the Massachusetts system--I would point to the system of bureaucratic regulation in the United States. When you are going to set a utility rate, when you are going to set some other kind of rate, the lawyers, the accountants, the lobbyists and the actuaries of the industry descend on the rate review board and they spend months on it; they are all earning \$200 to \$300 an hour while they are there, with wonderful expense accounts. You have a few consumers show up to try to fight this process and try to get their information before the board. In the end, the industry gets basically what it wants, but the whole process has cost society and the consumers a great deal of money.

That is what I call the worst aspect of government regulation. You get all the bigness of government regulation and none of the efficiency. We believe that is what is going to happen here. We can agree with Mr. Runciman on that part, that that is very likely going to be the outcome.

I differ with Mr. Runciman in that that will probably feed Mr. Runciman's particular view of things just as much as it might assist us in ours.

Mr. Chairman: Speak into the mike, please.

Mr. Hampton: Mr. Runciman will be able to say: "Ah, hah, there it is. Big government does not work. Let us go back to unfettered, free enterprise and do it that way."

We may well, as Mr. Swart has done so well during these committee hearings, point out time and time again the excesses of the problem and how we believe it can be made better. That brings me to Ms. Poole's comments. I think that Mr. Swart and I would both agree that this year in Manitoba there are going to be some rate increases. No one is going to deny that. I think you

have to put that in the context, though, of how a government-run insurance system is supposed to work. Government-run insurance systems are supposed to break even. That is what they aim for. You may run into a year where you do not break even. That is what has happened in Manitoba. They have not broken even.

The other side of the coin is that rates are to be set as low as possible, and no one can deny that. I invite Ms. Poole to come to my constituency, because she will see that all the young drivers, rather than go to an Ontario university or to an Ontario community college, go to Manitoba, because at least there they can afford to drive a car. It is as pure and simple as that. We lose all of the young people out of my constituency to the University of Winnipeg, the University of Manitoba and Red River Community College, because it is so much cheaper for them.

Ms. Poole: That is what Bill 2 addresses.

Mr. Swart: Driver experience? Ho.

Mr. Hampton: In fact, the system in Manitoba may have run into a problem on one year or two years. The fact of the matter is that in the 20-year history of the plan--well, it is approaching 20 years now--it has done very well. It has kept premiums quite low. It has provided a superior coverage in terms of insurance. It is not meant to be delivered the same way insurance is delivered here. That is why Mr. Garriock can come here and say, "Well, not everyone who works in the insurance industry in Manitoba is a professional." You do not need to be. It is a very standardized system of insurance.

I cannot let this pass. I want to say something about the so-called professionalism here in Ontario. One of the things Mr. Swart and I were successful in doing during these hearings, I think, was debunking some of the misleading information put out by the so-called insurance professionals in this province over the last seven or eight months.

I think it is significant that we could have Terry Kelaher come before this committee and try to fudge the issue and then try to say, "Well, it was a misprint; it must have been a misprint," but finally have to acknowledge that where they had said the government of Saskatchewan had subsidized the Saskatchewan government insurance industry to the tune of \$72 million, it was not a subsidy. They had used the insurance company as a mechanism to distribute \$72 million in crop insurance. It had nothing to do with auto insurance, despite what they had said in their document.

We also got, I believe from the brokers in Thunder Bay, and we certainly addressed it with the people from Manitoba, that the reputed \$18.5 million in subsidies that went to the government of Manitoba was in fact a sound, theoretical way of assessing people who are on the road a lot and therefore perhaps run a higher risk of getting into an accident. The insurance brokers in Thunder Bay, although they did not agree that that was necessarily a good way of doing it, did agree that that is a potentially sound way of doing it. The people from Manitoba indicated that that was the theory behind it.

It is with some interest that I note the classification system has had to wrestle with how you deal with somebody who is on the road a lot. Insurance companies who came to us put that submission to us. How do you deal with somebody who is on the road a lot in terms of assessing his higher risk?

1140

If anything, what we have done here is that we have broken through some of the misinformation that was provided by the insurance industry. Hopefully, after this the debate about insurance will really get down to the basics.

The fact of the matter is that insurance companies in Saskatchewan, Manitoba and British Columbia do provide good insurance. They provide it at a cost that consumers can afford. It is a sound system. There are not hundreds of thousands of bureaucratic employees running around--we got that from both British Columbia and Manitoba--and those are efficiencies.

You say to us, "What about the 12,000 people who would be laid off in Ontario?" First of all, it is not demonstrated that 12,000 employees would necessarily be laid off, but if it is true that 12,000 employees in Ontario might be laid off under a publicly operated insurance operation, does that not demonstrate very clearly the excesses and some of the inefficiencies that are there now? If that is the case, could we not put those 12,000 people to work more efficiently in our economy?

We have a growing economy in Ontario, whether by accident or design, and I would submit that under the economic theories that your party probably subscribes to more than mine, you would say, and economists who speak for your party would probably say, "Yes, it would be better to get those people out of an inefficient insurance industry and into another industry where they can perform efficiently."

Ms. Poole: Mr. Chairman, could you ask if those were rhetorical questions or if he would actually like answers to them?

Mr. Chairman: I am going to preclude the answers, I think.

Mr. Hampton: I want to say one final thing. I think this committee has seen an excellent meeting of not only facts and figures, and out of that some true facts and figures have emerged, but we have also seen a good meeting of different positions on how our society ought to do things. Mr. Runciman criticized medicare a while ago. I can only say to Mr. Runciman that I hope he was watching the nurses' strike in Britain.

Mr. Runciman: That is a misrepresentation of what I said. I was talking about extra billing.

Mr. Hampton: Well, the larger concept of medical care.

I hope that in the larger view, since you have been watching the nurses' strike in Britain--

Mr. Keyes: And Alberta, did you say?

Mr. Hampton: And Alberta, yes. I think by and large that has happened on this committee. We have had a good meeting of some theories as to how things ought to be done.

I would suggest to all of you that the story is not over yet, that we are probably going to be back here in a couple of years. This bill that has now passed committee and will likely pass in the House is probably going to be a source of a great deal of debate in Ontario in the next three or four years to come.

Ms. Hart: Very briefly, I think we have all established beyond a shadow of a doubt that the three parties come at this issue from differing points of view. What I wanted to say, from the perspective of a member who has been through committee with a number of bills, is that I think we have learned a lot from this exercise--all of us. I am personally very happy to see how well everybody worked together, that it was not a bill that was ramrodded through. It was apparent that we were listening to the groups before us, that ideas were tossed around by all three parties and that we came to some resolution on some of those ideas, though not all of them.

I particularly want to compliment the parliamentary assistant and the ministry staff, who I feel made a very valuable contribution to this committee, as well as the committee staff. I think we called on all of those people on a number of occasions and they all did us proud. I just want to say thank you from my perspective.

Mr. Chairman: Seeing no further questions from any members of the committee, we would--

Mr. Keyes: Do we have to go until 12?

Mr. Chairman: The jury addresses have been so long I have forgotten where I am.

Mr. Swart: You have a motion before you on section 33a. I would like a recorded vote on it.

Mr. Chairman: I have a recorded vote requested.

Mr. Keyes: On a point of order, Mr. Chairman: I know it may sound inappropriate, but I think the media have cornered one member out there and I would ask that at least the member could be brought in.

The committee divided on section 33a, as moved by Mr. Swart, which was negatived on the following vote:

Ayes

Hampton, Swart.

Nays

Hart, Keyes, McLean, McClelland, Poole, Runciman, Sola.

Ayes 2; nays 7.

Mr. Chairman: We have two further items. Section 34. Is there any debate or any discussion on section 34? I will be amazed if there is.

Section 34 agreed to.

Title agreed to.

Mr. Chairman: Shall the bill, as amended, carry?

Mr. Runciman: A recorded vote.

Mr. Chairman: All right. A recorded vote has been requested.

The committee divided on the bill, as amended, which was agreed to on the following vote:

Ayes

Hart, Keyes, McClelland, Poole, Sola.

Nays

Hampton, McLean, Runciman, Swart.

Ayes 5; nays 4.

Mr. Chairman: Shall I report the bill, as amended, to the House?

Interjection: No.

Mr. Chairman: Do you wish a recorded vote on that as well, Mr. Runciman?

Those in favour? Those opposed? Carried.

Bill, as amended, ordered to be reported.

Mr. Swart: Others have expressed warm feelings towards the actions of this committee and the associations we have had. I want to echo that. I will not be back. I am not a member of this committee. You may want to cheer at this point, but I am not a member of this committee. I want to tell you I have enjoyed it. I have enjoyed our associations, even those which have had real differences of opinion. I have a good feeling towards everyone. I too want to thank the staff. They have not only been very competent but also very pleasant socially as well. I am just going to say it has been a very interesting experience. In the whole democratic process, I think this has been an example of how it can really work, and even with the differences, all have a good feeling.

Mr. Chairman: Just in closing, I would like to thank all members of the committee for making my job a little easier. I would like to thank staff and everyone else involved. I used to chair the standing committee on regulations and private bills. That was a far different situation than this. This is really my first crack at clause-by-clause, but I enjoyed it. I echo the--

Mr. Swart: How do you feel towards those who did not make your job easier?

Mr. Chairman: I always take the position that you can fight like hell in here, but when you get outside it is friendship. I would like to thank all of you. We stand adjourned until two years from today, Mr. Hampton.

The committee adjourned at 11:49 a.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ORGANIZATION

TUESDAY, JUNE 21, 1988



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Ballinger, William G. (Durham-York L) for Ms. Hart

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Lipsett, Ron (Grey L) for Mr. Keyes

Pelissero, Harry E. (Lincoln L) for Ms. Poole

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Farnan

Reycraft, Douglas R. (Middlesex L) for Mr. Kanter

Clerk: Mellor, Lynn

Staff:

Swift, Susan, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, June 21, 1988

The committee met at 3:10 p.m. in room 228.

ORGANIZATION

Mr. Chairman: I recognize a quorum. Although Mr. Hampton is not here, I understand we are in agreement that we can start at this point.

By the way, this is a no-smoking committee, Mr. Ballinger. Would you kindly put out your rather large bowl?

Interjection.

Mr. Chairman: No. I am serious.

Mr. Ballinger: Having heard that, I accept the generous offer to put out my pipe.

Mr. Chairman: Perhaps before we get started, I could indicate to you that I understand the Board of Internal Economy will be sitting not as late as I had anticipated. There are a couple of members who have to get away; so it is necessary that we have a budget down there by five o'clock. I do not have a watch; I pawned it. Maybe someone can lend me his.

Mr. Philip: You have 45 minutes to get there.

Mr. Chairman: All right.

You should have before you in your material a budget, if we could go directly to that. It is not a final budget; we could seek leave to obtain a supplementary budget. Perhaps everybody could move to his copy of the budget.

Would you like the clerk to explain what she has done here?

Clerk of the Committee: I have prepared the budget in anticipation of eight weeks of hearings, five days a week.

Mr. Ballinger: Five days a week?

Clerk of the Committee: Allowing for that much. I have allowed for four weeks of travel and four weeks here.

I have allowed, for advertising, one shot in all dailies in Ontario.

Translation: any exhibits or letters that need to be translated. That is that first item. If the committee decides it wants simultaneous interpretation, usually in Ottawa and Sudbury it is provided, so I have allowed for approximately three days of simultaneous translation. The interpreters run to \$400 a day for a six-hour day and \$100 an hour after that for overtime. I have allowed for nine hours a day.

Rental of the sound equipment: That is needed when we have the simultaneous interpretation.

Professional services, interpretation: That is if we have someone before the committee who may have an impairment of some kind, either of speaking or hearing. It is to provide ease to them in making their presentations.

Witness expenses: I have allowed for \$3,000. If a witness needs assistance to get here from whatever place he may be and he requests it, it is up to the committee to make a decision.

Printing: That is strictly for the photocopying of exhibits.

Books, maps and publications: That is any other documents you may require.

Office supplies: That is what keeps me going.

Meeting room rentals: I have allowed for approximately 16 days at the maximum I have ever had to pay, which is \$500 a day. I have allowed for that.

Catering and hospitality: That is coffee in the meetings. I have allowed \$6,000.

Postage: If you want a mailing or something along that line, there is \$1,000 there.

In the ads, we always indicate where someone wants to make a collect call; that is what that \$1,000 for long-distance charges is.

Transportation of goods, courier services: Often when we are on the road what I and any of the other clerks will do is courier stuff back here so people can be working on it here.

That is it. If we pass this now and there is a need for more in any area, we can do a supplementary at a later date.

Mr. Chairman: Are there any questions?

Mr. Ballinger: My question relates to the advertising. Did I hear you correctly when you said you were going to be advertising in dailies?

Clerk of the Committee: I have allowed for one advertisement in all Ontario dailies, and that is the cost of that.

Mr. Ballinger: Let me ask you a question. If the committee travels to more rural parts of Ontario, which I am sure it will once it establishes a schedule, what about the weeklies?

Clerk of the Committee: That will be a decision the committee will have to make. I can put a supplementary in at a later date to accommodate that if the committee decides in that way.

Mr. Ballinger: Really, in a lot of areas of Ontario, the only medium is the weekly newspaper.

Clerk of the Committee: I am prepared to put that in at a later date.

Mr. Cureatz: With the substantial amount of travelling we will be doing, I trust we will be getting into that shortly, Mr. Chairman.

Mr. Chairman: Yes, we will. We will try to deal with it.

Mr. Cureatz: My colleague and I anticipate that possibly she may do western Ontario and then when it comes to the east, I will be travelling independently in the east. We were wondering, in terms of mileage, is that accommodated for, if one is using his own vehicle?

Clerk of the Committee: Yes. That would be accommodated for in the area of travel and accommodation.

Mr. Chairman: You are only entitled to the maximum of what the economy fare would be to there anyway.

Clerk of the Committee: It is 26 cents.

Mr. Cureatz: It is 26 cents. I could not see coming to Queen's Park just to go back to London or Ottawa.

Clerk of the Committee: No. It would be accommodated for in the transportation.

Mr. Cureatz: So we just would not have that. OK.

Mr. Chairman: Any further questions from any other members?

Mr. Pelissero: The long distance you mentioned was for people calling in. Can we not provide them with the 1-800 number?

Clerk of the Committee: The call is directed to my office; we do not have an 800 number in the clerk's office.

Mr. Pelissero: So you are not a 965—

Clerk of the Committee: It is a 965, but I do not have the 800 line into my office.

Mr. Pelissero: I have lost something here. If I dial 1-800-268-3747 and ask for 965—whatever your extension is, will I not get it?

Clerk of the Committee: To my knowledge, no. I am not positive, but to my knowledge, no.

Mr. Pelissero: That solves the problem.

Mr. Reyecraft: On the meeting per diems, you indicated you are planning on eight weeks, five days a week?

Clerk of the Committee: Yes.

Mr. Reyecraft: On the meeting room rental, it looks as if you are working on the basis of four days a week for four weeks.

Clerk of the Committee: That would accommodate, say, if we were meeting four days a week on the road at a maximum of \$500 a day, which is the most I have ever had to pay for a meeting room anywhere. I expect that in most

places, it will be less. I think it will be more than enough to accommodate the expenses which will be incurred for meeting rooms.

Mr. Chairman: We would likely, when on the road, be travelling back and forth on one of those days, I would imagine.

Clerk of the Committee: It depends on where you want to go.

Mr. Reyecraft: Perhaps, perhaps not. As long as there is enough there to handle five days a week if it is needed when the committee is on the road, I am comfortable.

Clerk of the Committee: Again, if not, we can put a supplementary in for the additional amount.

Mr. Philip: Most municipal councils are not as busy during the summertime as other times, and I am wondering if it is normal for us to pay a fee to local municipalities for using their facilities.

Clerk of the Committee: Different municipalities have different processes. Sometimes public libraries have rooms you can meet in. Sometimes they donate them and sometimes they do not. It just depends what I am able to line up and what I am not able to line up and how tight I can be with the dollar.

Mr. Philip: I am just suggesting that wherever possible, if we use municipal committee rooms and libraries, it is somewhat cheaper than using the hotel accommodations for hearings.

Clerk of the Committee: We try wherever possible.

Mr. Chairman: We can leave that to Lynn Mellor. She will look after that, I am sure.

Mr. Chairman: Any other questions? That is not an invitation, by the way.

1520

Mr. Pelissero: You mentioned five days a week. I do not know what the committee's practice has been in the past, but coming from the standing committee on finance and economic affairs, the most we ever sat was four days a week.

Mr. Chairman: That will be up to the committee to decide after this, but the money is there in the event the committee decides on five days.

Mr. Pelissero: OK.

Mr. Chairman: Are there any other questions?

Mr. Reyecraft: It is unfortunate Mr. Pelissero was not here to participate in hearings on one committee that at one point went to six days a week, as I recall.

Mr. Chairman: Mr. Philip has moved acceptance of the budget. Is that the wish of the committee? All in favour?

Motion agreed to.

Mr. Chairman: Thank you very much. I have a few items here, which perhaps we could look at. I believe we have already determined how many weeks. Eight weeks is what is allocated to us. Is that correct?

Mr. Reycraft: That is correct.

Clerk of the Committee: Yes.

Mr. Chairman: Perhaps we could go right to the question of how many days a week the committee chooses to sit.

Mr. Reycraft: It may be difficult to determine that at this point. My expectation would be that there will be a fairly large volume of requests to appear before the committee, but I think the committee, as have others, normally would try to establish the number of sitting days after there has been some indication of how many requests are going to be made to us. I am not sure we can conclude that it should sit only four days a week at this point. Also, it may very well be necessary for this committee to sit in the evenings, because I expect we will get a fairly heavy volume of requests. Things like that will need to be determined as well, but I am not sure that we can make those determinations now.

Mr. Philip: I would like to make a couple of points. One is that I was on the select committee that looked at Sunday shopping before, and we all came back from that committee, the staff and everyone else, absolutely exhausted with the schedule we had in travel. I would like to make sure that whatever we do, we start to pace ourselves so that we do not try to do two or three cities in one day with two or three air flights. That was the kind of thing which, for various reasons then, we had to do.

Second, I think I would rather sit five days a week a few weeks if it meant cutting out one of the weeks. I would rather we do it in seven weeks rather than eight weeks, if that is at all possible. I have absolutely no weeks off during the summer. Mr. Ballinger and myself now are negotiating that we may have one week off.

Mr. Ballinger: Hear, hear.

Mr. Philip: Quite frankly, both Mr. Ballinger and I need a holiday, and I would rather go five days a week for a few weeks and skip a week than have to do the full eight weeks.

Mr. Chairman: We have a caucus September 6 through September 9, which will be a break period. Is that included in the eight weeks?

Clerk of the Committee: No.

Mr. Chairman: It is not included in the eight weeks.

Clerk of the Committee: We are working around it.

Mr. Chairman: OK. There will actually be a break during that period of time, but I hear what you are saying.

Mr. Cureatz: As much as I respect my learned colleague from the second party, I am not that keen on squeezing in the five days, because for all of us who are conscientious of our particular ridings, it really does not give us much flexibility in terms of meeting those commitments, especially if we are out of Toronto. We fly back into Toronto. We chew up Saturday travelling there and Sunday travelling back. If I had my druthers, I would rather have it three or four days a week over the eight weeks instead of five or six weeks crammed into five days.

Mr. Chairman: Beforehand, perhaps we could determine how much time the committee considers it will need for clause-by-clause, and then we will be able to determine how much of that eight weeks we can use for travelling.

Mr. Cureatz: Just having input on that, my gut feeling is the bill is not that substantial in terms of sections; so I cannot really see a huge quantity of time being needed. As a matter of fact, I would be surprised if we would need a week. I could see a couple of days. It is really the touring and having input that I think this committee is all about.

Mr. Reycraft: I would like to make a suggestion, and that is that the committee prepare to be briefed by the ministry and have those kinds of presentations in the first week that has been allocated to it, reserve the final week for clause-by-clause debate and then try to plan the hearings into the six weeks in between.

Mr. Philip: I think the amount of time we are going to have will depend on what process we set up. With handling some bills, it has been the practice, at least of this committee, in the past to allow presentations on individual items or suggestions on individual items for amendments on clause-by-clause.

I do not know whether after the hearings, during that week in which we are doing the clause-by-clause, it is our intention to allow other groups or some of the groups that have appeared before us to make short presentations on individual amendments which they may wish or whether it is the feeling of the committee that we simply hear what amendments they want along the road, that research picks it up and gives it out to the members and that then it is up to the members whether they want to move any of the amendments or not. It will be slower if we are going to allow even the brief presentations on clause-by-clause. Notwithstanding that, I do not think we are going to need more than a week anyway.

Mr. Chairman: I understand from the clerk that it is not the practice to hear delegations during the clause-by-clause, that they can speak to the member who is proposing the particular amendment and deal with it in that way.

Mr. Philip: It has been the practice of the standing committee on administration of justice in the past to do that.

Interjection.

Mr. Philip: It was when I was the chairman.

Mr. Chairman: We have a consensus then, I gather from hearing what I have heard that we would reserve the last week for clause-by-clause and reserve the first week or a portion thereof for briefings by the ministry. Is that correct? Is there a consensus to that effect?

Agreed to.

Mr. Chairman: Fine. How much time do you believe we would need for the ministries? A couple of days? So we can give direction to staff, perhaps we can use the balance of that week. The clerk indicates one for the Ministry of Labour and one for the Ministry of the Solicitor General.

Mr. Reyecraft: I think a couple of days should be sufficient, but other members may have different ideas. If we have one day for each ministry, it would seem to me that would be adequate.

Mr. Chairman: That consensus, I gather, would allow us to use the other two or three days, depending on what it is, for—

Clerk of the Committee: Maybe umbrella groups.

Mr. Chairman: —umbrella groups, as the clerk suggests, perhaps here in Toronto before we start travelling.

Mr. Philip: I thought it was your proposal to travel the first weeks.

Mr. Chairman: I leave that up to the committee. I really do not make any decisions here. I just try to maintain order.

Ms. Poole: If I could point out, that first week is a short one; it is a long weekend.

Mr. Chairman: Is that August 1, the Civic Holiday?

Ms. Poole: Yes.

Mr. Chairman: That may answer the question right there.

Mr. Philip: It probably makes more sense then to have the presentation the first week. I just found a new reason for agreeing with you.

Mr. Reyecraft: Oh, good.

Mr. Chairman: So we have a consensus then, that the ministries will brief us the first week, and since it is a short week, perhaps that could be the totality of it.

Mr. Reyecraft: I am sure members will be busy in their ridings on August 1; so it might be appropriate to schedule the briefings on the Wednesday and Thursday to allow them to get back to Toronto on Tuesday.

Mr. Chairman: Does that seem reasonable? Is there consensus on that?

Agreed to.

Mr. Chairman: All right. Mr. Reyecraft had suggested that we be flexible enough to meet in the a.m., the p.m. or both to accommodate groups. Is that agreeable?

Mr. Philip: Provided we are not doing days that are 14 hours long.

Mr. Chairman: Recognizing that.

Mr. Philip: I find it difficult to start hearings at 10 a.m. and then finish at 10 p.m. and do it several days in a row. I think you are right. We need some evening hearings, but we should allow for a little bit of time off in the mornings after evening hearings.

1530

Mr. Reycraft: I would think that particularly during those weeks when the committee is going to be on the road that it would be appropriate to break the week up with some evening hearings. Then we are going to lose some of that time travelling from one location to another. Just in terms of dealing with as many groups and individuals as possible, we are going to need to look at a flexible schedule.

Mr. Chairman: Might I suggest before we move on to the next item, which should be the question of advertising and the nature of the advertising, that perhaps the second week might be spent here in Toronto with umbrella groups to give enough time for the advertising to be responded to. Does that sound reasonable?

Mr. Philip: Why do we not do our out-of-province travel so that we have some comparative questions to ask the umbrella groups when they do come? I suggest that the second week we do the out-of-province travel.

Mr. Reycraft: You indicated that we would need to give people time to get ready. We can put the ads out in the dailies next week. Is that possible?

Clerk of the Committee: No.

Mr. Reycraft: It is not possible?

Clerk of the Committee: From today, if you were to approve the copy exactly as I have it, by the time I have it translated it would be the end of the week. Then I would get it up to the advertising company. By the time the company gets it out, it needs five days, and then to the papers, before the papers will run it. I can do it in very tightly, possibly in two weeks, but probably three.

Then you should allow at least two weeks after it has appeared for people to respond. If your time frame is any tighter than that, then you are going to have complaints that they did not have enough notice. So three weeks is what I need comfortably to get the ad copy into the papers' hands.

Mr. Reycraft: Does that take us through to the end of the first week in July?

Clerk of the Committee: What is the date today?

Mr. Chairman: June 21.

Clerk of the Committee: That would take us to some time in the week of July 11 before the ads would run, which would just give two weeks before the hearings started for people to respond.

Ms. Poole: Would it not be feasible since you have the ministry coming in the first week?

Clerk of the Committee: No, from the time the ad appears and the hearings start.

Mr. Reycraft: If the ads ran the week of the July 11 and the hearings began on July 12—

Clerk of the Committee: No, on July 2.

Mr. Reycraft: I am sorry. I am looking at the wrong month.

Ms. Poole: Because we have the ministry coming in on the first week.

Clerk of the Committee: Yes, but the hearings are starting on the week of July 2, regardless of who is coming.

Mr. Chairman: We are going to cause an Excedrin headache for Hansard if we all speak up at the same time.

Mr. Reycraft: If the ads can run that week, the week of July 11, it would seem to me that groups would have lots of time to get ready for hearings to start on August 8.

Clerk of the Committee: Yes.

Mr. Philip: I have a personal problem with the week of August 15. Another committee that I am sitting on also has public hearings. During the first week, I can substitute someone on that other committee. The second and third weeks I am having trouble with.

If we are getting briefings by other jurisdictions, I would at least like to participate in those briefings. I would much prefer that the travel to the jurisdictions be the week of August 8.

Mr. Chairman: Perhaps we could find out where those are and then we can—

Mr. Philip: I think it will also make our questions more focused on some of the people that appear before us if we have looked at the other jurisdictions.

Mr. Reycraft: We are moving into a whole other area. I assume Mr. Philip is probably talking about jurisdictions outside Ontario. Is that correct?

Mr. Philip: Yes, other provinces.

Mr. Reycraft: My sense is that the committee can use its time much more efficiently by identifying people whom it needs to talk to in those other provinces and inviting them to come before the committee and make presentations. It is going to be terribly time-consuming if the committee travels to British Columbia, Nova Scotia, Saskatchewan, Alberta, Michigan, New York and whatever other jurisdictions it thinks it needs to look into.

Mr. Philip: I think there are probably only two that we will want to look at anyway. One is Nova Scotia, which has had the municipal option and has rescinded it, and the other is British Columbia, which went the municipal option route and now has had it in operation for a few years. I do not see us

going to Alberta, because Alberta has always, since the Supreme Court decision, been open anyway, so there is no point in going there. I think we can do that in a matter of four days.

You get a much better sense by talking to municipal councils and people like that, and meeting with local merchant groups. You cannot bring the whole municipal council, or even three or four councillors, to Toronto. In terms of out-of-province jurisdictions, I suggest we look at British Columbia and Nova Scotia.

Mr. Chairman: Before we get into the question of when we are going to go there, perhaps we should establish that we are going there. If there is to be debate on that, I am prepared to entertain that. If there is not to be any, I think we should vote on that since, from listening to Mr. Reycraft, there does not appear to be a consensus. Mr. Cureatz, you had a comment on this item.

Mr. Cureatz: We have jumped into travelling and away from when to travel. My input was that I was going to agree with Mr. Philip. It just makes sense, to me anyway, to have other jurisdictions' input as to how they are functioning with legislation, as compared to what is proposed or not. Then, as the groups are coming forward, we will have a framework to apply it to. We can start off with the ministry's legislation and comparative legislation, and then go into the hearings.

Mr. Chairman: So you are addressing the timing.

Mr. Cureatz: I am addressing the timing. I am sympathetic to August 8 and August 15.

Mr. Chairman: Rather than discuss the timing, let us determine whether or not we are going to do that. If we are, then we can get into the timing of it.

Mr. Cureatz: If I am still on, can I talk to travelling?

Mr. Chairman: Sure.

Mr. Cureatz: I congratulate Mr. Philip because I must confess I had not been aware of Nova Scotia's retraction.

If the government has some concerns, that is what it is all about with a committee tooting around the country. An option would be to go to the closest jurisdiction for a comparative view.

Mr. Philip, you said that Nova Scotia had brought in the municipal option and then retracted it.

Mr. Philip: Yes. I just think you need a balanced view, though. If you are going to go to one where they are all going to say, "It is a bad idea and we retracted it," then I think in fairness to the government, you should at least go to one where the government is going to say, "It was a good idea and we have kept it." I think that if we are going to Nova Scotia, then we should at least hear the Vander Zalm view as to why the municipal option is a good idea and why he thinks it is working there.

Mr. Reyecraft: I agree that it is worth while for the committee to know the background of the change in the legislation of Nova Scotia, and it should find out as much as possible about the experience in British Columbia, but I do not think the committee needs to go to either of those places to learn that.

I think we can invite the appropriate officials from within the ministries that regulate retail store hours in those two provinces and in whatever other jurisdictions we want to inquire into. We can also invite the heads of consumer organizations and individuals representing businessmen's associations. We can decide whom we want to get information from and invite them here. It is a much more efficient use of committee time and much less expensive as well.

We spent a lot of time around this place trying to get a firm commitment from the government to allow extensive travel within the province and extensive public hearings on this issue. Let's try to use that time to hear what people in Ontario want to tell us about the pieces of legislation.

1540

Mr. Chairman: I register that as a negative, to travel, so we will now move on to the balance of the list. Mr. Pelissero, do you want to address this?

Mr. Pelissero: Mr. Reyecraft covered off most of the points I wanted to hit in terms of effective use of our time. I can appreciate Mr. Philip not wanting to be away from that type of briefing environmen. If you go to Nova Scotia, you are looking at a minimum of a three-day round trip; to go to British Columbia is a minimum three-day round trip. Not only that, but add the logistics of touching base with somebody out there, making sure you get a rental hall wherever you go.

As an effective use of our time, I would support Mr. Reyecraft in the sense of inviting people to come here. We have got some money built into the budget for that. If that is not enough, I think we can do a balance off and say, "Well, as opposed to sending 10 of us out there or 10 plus support staff, it's a lot more effective to have people come to us."

Ms. Poole: I am concerned about the cost-effectiveness of this. I would suggest that either we have the witnesses come to Toronto or, if the committee is set on travelling to the other jurisdictions, that perhaps we split it and instead of having the entire 11 members plus Hansard and support staff going out to BC and then going to Nova Scotia, if it is not acceptable to have the witnesses come here, perhaps we could have a representative of each party go to Nova Scotia and at the same time others to BC, who could bring their findings back. It would seem to me much more cost-effective.

Mr. Chairman: More a fact-finding—

Ms. Poole: More a fact-finding. That way you would not have the support staff, Hansard and all the other expenses entailed along with it.

Mr. Philip: As someone who has been on committees for quite a long time around here, I find the most cost-effective is being on the ground, looking the people in the eye and finding out what is really happening. When you invite people from other jurisdictions, they usually quote the party line

or the official line and they are usually very much more cautious about what they are saying in another jurisdiction.

We have had committees where they were told that the government did X, Y and Z and this is what happened or did not happen. When we went over there and started talking to some of the other public servants, they started saying: "Ddid you look at such and such a thing? Did you talk to so and so?" You find out there is a completely different set of reasons as to why things are happening or why they are not happening compared to the official line which the public servant feels is the cautious and prudent thing to quote.

If you are dealing with a major piece of legislation and there are two jurisdictions, one which has rescinded it and the other which has gone with it and still has it, it seems to me that it is worth while to go out there and find out what the merchants are really saying, to actually go into a shopping centre and talk to people, talk to some of the city councils and the mayors in the Vancouver area perhaps and talk to the legislators in Nova Scotia.

You do not have to bring Hansard with you. What you bring is a researcher who makes some notes in summary of what was discovered or the views that were pointed out. I think you get a lot more information when you do not have Hansard and you do not have people feeling they are going to be quoted back to their governments. My experience is that you get a lot more out of that kind of experience than simply calling somebody in, representing his or her particular group into a committee.

In terms of cost, you can see a lot more groups on the ground out there than you could ever afford to bring here at air cost into Toronto and have to pay their hotel bills. It is a lot less expensive to transport committee members plus a clerk and a researcher than to transport large numbers of people from other jurisdictions here.

Mr. Chairman: Just as a matter of information for the committee, the clerk tells me that even if we were to travel on a fact-finding, if we were to split it up as Ms. Poole has suggested, we would require a clerk to travel with each of those groups and if we wanted research with us we would have to have a researcher as well. You know that we are going to need a clerk at least, so consider that.

Mr. Cureatz: Be it far from me to convince the learned Liberals on the other side of the room. In all seriousness, if you have got your marching orders—

Mr. Ballinger: Sam, this isn't question period.

Mr. Cureatz: Look, I have been there, so I know. If you are told, "You're not travelling," why waste our time? So we are not travelling.

I think a compromise would not hurt. I was sympathetic to Ms. Poole's comment about splitting it up, but that loses the consistency of the committee in terms of what one group hears and what another group hears. If we cannot get the whole bundle— I will tell you, the master of committees was Jim Breithaupt and I am now appreciative of the frustrations he had because there is much to what Mr. Philip says about meeting the people on their home turf.

Unless there is some great big plot by the cabinet that, "They've been out to BC," and they do not want to be embarrassed about the whole thing— Who knows? I would just make a pitch that you can go back and say: "Look, the east coast is not bad. There is not going to be that great, horrendous expenditure."

You will find out something. You will learn something. We all know it is going to pass. Do you think these groups are going to convince you people? Of course not. In a way, it is a frustrating exercise. On the other hand, who knows? You might come up with the odd amendment that will prove of some benefit when we, say, go to Nova Scotia where it had brought it in and then retracted it.

Mr. Chairman: We have spent a considerable amount of time on this.

Mr. Reycraft: I will readily admit that I do not have the experience of Mr. Philip, travelling on committees outside the province nor that of the former member for Kitchener, Mr. Breithaupt. However, I have had some experience on committees and my experience in inviting people from other provinces and other jurisdictions to come before a committee and make presentations has been a very positive one. We did it on Bill 30, and I thought it was very productive.

If we look at the time it takes us to travel to these places and get back, we are going to chew up too much of those eight weeks.

Mr. Philip: You can take in Nova Scotia and BC in the same week. What you need are two days in Nova Scotia and two days in BC.

Mr. Reycraft: Well, all that jet lag—

Mr. Hampton: It seems to me that the kind of legislation we are dealing with here could have some pretty profound effects. I know there is a lot of disagreement between your side of the table and our side of the table as to what those effects might be and when they might come and who they might affect.

I do not feel that we can ascertain effectively what those social effects will be, how quickly they might occur or to whom they might happen by simply talking to, let us say, a government bureaucrat from Nova Scotia or a single business person from Nova Scotia or even from British Columbia. Some of the issues which are in dispute here (inaudible) says that you have now devised lease provisions which would not allow a mall owner to insist that people stay open on Sunday. It is my understanding that we will see some of that in British Columbia and we will see that kind of issue dealt with.

There is the whole question of labour and how much people who work in the retail trade sector are affected, if they are affected at all and what has happened. I am very leery of trying to get that kind of information from a bureaucrat or even from, let us say, the head of a given trade union or the head of a local of a given trade union who may not have been affected themselves.

We are dealing with a piece of legislation which the government says is important. It would not have brought it in this early last fall and spent as much time as we have spent on it already this spring unless it was important. If it is important, I think we should try to do a very careful and searching analysis.

I think we can only do that, because of the kind of legislation it is, legislation which reputedly has a lot of social effects, by talking to people who have been affected, and that is by going to those provinces.

1550

Mr. Chairman: Mrs. Cunningham and Mr. Ballinger, since they have not already spoken. It would be nice to get a consensus here, but it appears as though it is either yea or nay, or Ms. Poole's halfway house, as it were.

Mr. Cureatz: Or just the one jurisdiction.

Mr. Chairman: That is a third possibility.

Mrs. Cunningham: Just speaking from my recent experience in having to look at it, stand about for six weeks and go tramping the streets and find out a little bit about Sunday shopping, I can assure you the most information I got, either for or against, that was meaningful to me was as I visited either in something that was designed as a tourist area or, more important, the malls, talking to people who were shopping and, more important, working, and to single women and students. I got a real feeling for how things worked and did not work that could help us. Anyway, whether we have the legislation or whether we are amending it in any way, I feel more knowledgeable because of those kinds of opportunities.

I am not excited about spending a lot of time travelling in the summer, I can assure you; I would rather be with my family. I think if we could make a quick trip east and west, within a week, it would be a good use of our time.

I am not excited about having people from British Columbia or Nova Scotia come and speak to us about questions such as, "How did you define your defined area, meaning tourist area or wherever you are allowing the shopping to happen on Sundays?" or "How is the legislation working for you as an employee?" I am not excited about bringing people in, because I think you would have a hard time defining whom you would want to hear from. I think we could do a lot of that by mail.

I guess I am speaking to two things. Who is going to appear before the committee from those two provinces? I would be curious, Mr. Chairman, as to how you pick them. I am interested in that, if you go in that direction, because I think you have to pick the people who were most affected and not the people who wrote the legislation. I am looking at effective legislation, so I would be interested in talking to you about that if we do decide to go that way.

But, more important, in finding out how it was working, how legislation was affecting people and how they did not want it changed, going out and seeing for myself and talking on the spot was a real eye-opener for me. I cannot underline it any more clearly than I have.

Mr. Ballinger: I was not around, as you are aware, for the select committee and the discussion, but I think the difference with this one is that what we now have is a piece of proposed legislation. The difference between what we now have, Dianne, and what you had was the so-called fear out there of wide-open Sunday shopping. I think what we are talking about is comparing apples and oranges.

Although I am only a substitute here—and I am sure that throughout the summer there will be many substitutes on and off this committee; and if requested, I will certainly participate—I think it is important that this particular piece of proposed legislation get out to the public in Ontario first.

I just do not see any merit in travelling to the east coast or the west coast when in fact the majority of the people of Ontario do not even know the contents of the legislation. In setting up this committee, it is my understanding that this is exactly what we should be doing: this committee should be getting out into those communities in Ontario with this proposed legislation and soliciting the feedback.

I think everyone here who has spoken about travelling is presupposing the reception we are going to receive out there, and that is not my understanding of the purpose of this committee. I certainly would not support travelling outside of Ontario. At least in the initial stages, I think the committee should get out into Ontario and solicit the response that this committee is appointed to do.

Mr. Chairman: I am going to go back on what I said. I do not want to rush it, but this issue is one of many that we have to decide this afternoon. Mr. Philip and Ms. Poole, and then we are going to—

Mr. Philip: One of the things that you are going to have happen in this committee—it happened in the select committee—is that you are going to have groups of businessmen, the Ontario Korean Businessmen's Association among others, that will come before you and say that their members were put out of business by the Vander Zalm legislation.

Now, either you have to be there to ask the meaningful questions or you simply accept that what they are saying then is true. You are going to have umbrella groups that are going to say that certain things are the result of either the Nova Scotia legislation or the British Columbia legislation. Those are the two that they will talk about. Some will talk about the Manitoba legislation.

I do not know how you can have meaningful dialogue with the umbrella groups or with the groups that say that part of their membership has had either good or bad experiences in these. You will have The Bay come and say that it was great in BC, but if you have not been there and you have not seen exactly what is happening on the grounds, then it is simply one umbrella group's word against another umbrella group's word.

I cannot understand why members of the Liberal Party would be opposed to actually going out to see what has happened in two jurisdictions that have undergone experiences similar to what is being proposed here.

Ms. Poole: I guess, to sum up, the main thrust of our conversation this afternoon is whether it is more cost-effective and time-effective for us to travel out or to have witnesses come here.

Instead of just making this a political issue, I think if we really have a willingness to listen, there is information out there for us. For instance, I am sure that our research could come up with all sorts of newspaper articles from BC or Halifax on this very issue and on how the people are accepting it. They have done polling to see what different groups in BC and Nova Scotia have felt about the legislation and how it has worked over the last few years.

Certainly there are areas in which I think all three parties would agree that witnesses could be of great value to us. For instance, we might invite the head of the consumer association in BC or Nova Scotia to come to speak to us. Certainly a steering committee could reach a consensus among the three parties as to which witnesses would be most valuable. Perhaps there could even be a selection by each party as to whom they wish to have before us.

Mr. Philip: I can tell you that our party will come up with such a long list that it will cost the committee four times as much as sending the whole committee to both those jurisdictions.

Ms. Poole: I said a selection, not a total listing.

Mr. Chairman: There is not much point in continuing. It would appear that we have only one alternative: It is either go or not go.

Unless we can reach a consensus, I guess someone here is going to have to move a motion one way or the other and it will have to be determined. Or is there some consensus we can arrive at? No consensus?

Mr. Cureatz: I like Mr. Ballinger's approach, "Well, we'll wait it out then." Obviously, if we have a vote, we are going to be defeated. Right? That is what we have.

Mr. Chairman: I am waiting for a motion. I am not doing anything.

Mrs. Cunningham: The consensus is that we do a little bit of both.

Mr. Chairman: I do not know.

Mrs. Cunningham: I am not sure. I think some work needs to be done before we decide. I thought Ms. Poole made a good point.

Mr. Chairman: I gather from what she said that she just withdrew it.

Mrs. Cunningham: No. I did not hear her say we should not.

Ms. Poole: Nobody seemed too enthusiastic.

Mr. Ballinger: What is wrong with going out there and receiving the sort of perception of the general public on the proposed legislation?

Mrs. Cunningham: And then making a decision.

Mr. Ballinger: You are talking about eight weeks, Mr. Chairman. If, in fact, the committee in its wisdom finds that it is not working, I do not see any reason for putting down a hard and fast rule. And Mr. Philip, we do not have marching orders at all. I am here as a substitute trying to understand exactly what the role of the committee is and what it should be doing out there.

Mr. Chairman: I would like to correct you. We are down to six weeks for travel, but I do not see that there will be anything further to be gained from debating this. I am waiting for a motion from someone. Mrs. Cunningham?

Mrs. Cunningham: As far as receiving input from outside the province or visiting other provinces is concerned, I would say that this committee should re-evaluate it after having heard from most of the residents of Ontario.

Mr. Chairman: Is that a motion?

Mrs. Cunningham: Yes. I would say that during the week of—

Mr. Cureatz: Before the clause-by-clause.

Mrs. Cunningham: Before the clause-by-clause, we should make a decision as to whether or not it is necessary to visit other provinces. We will probably have a better idea at that point.

Mr. Chairman: Is that clear enough, Madam Clerk?

Clerk of the Committee: That is fine.

Mr. Chairman: Does that present any problem for us in terms of our supplementary?

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Clerk of the Committee: No, we can put it in (inaudible) decision..

Mr. Chiarelli: Would it not make more sense to get that information and use it as a resource for the balance of the hearings?

Mrs. Cunningham: I think that should be done anyway. I think we should be getting information.

Mr. Chiarelli: To have people from out of province come in, perhaps the second week and give us their information, their research and their reports, that will be valuable resource material for us to continue the hearings.

Mr. Chairman: I do not want to cut you off, Mr. Chiarelli, because you have not spoken yet, but we have a motion on the floor.

Mr. Chiarelli: I am speaking to the motion.

Mr. Chairman: I was not sure you were.

Mr. Chiarelli: Yes. Speaking to the motion, that the resource people, the witnesses from out of province should be earlier in the hearings rather than late so that we can use that as resource material.

Mr. Chairman: The reason I did not think you were speaking to the motion was that the motion, as I understand it, is that we are actually delaying—

Clerk of the Committee: We are postponing the decision to travel outside the province until September 19.

Mr. Chairman: Or postponing the decision until the week before the clause-by-clause. That is the motion we are voting on. Is everybody clear on that? All right. Those in favour of the motion as put by Mrs. Cunningham?

Mr. Reycraft: Mr. Chairman, can I understand this motion before I vote on it? You are saying that we should just defer a decision and that at some point—

Mrs. Cunningham: It is on whether we travel out of province or whether we ask witnesses to come here. My point on the witnesses coming here is quite simply that I think we should be getting information from the research staff. It may not be necessary to bring people to our committee.

I would hope that, with the newspaper articles—and certainly we are aware, because of the work we have done, of some of the surveys that have taken place—we do not have to ask those people to come and speak to us.

Mr. Chairman: I would only draw to your attention—

Mr. Chiarelli: On a point of order, Mr. Chairman.

Mr. Chairman: Excuse me just a second. I would only draw to your attention, Mrs. Cunningham, that if we delay it until the week before clause-by-clause consideration, it would make it impossible for the clerk or anyone else to schedule anything out in British Columbia or Nova Scotia other than a trip through the supermarket.

Mrs. Cunningham: I will change it. I was looking for direction. Someone else said "to before the clause by clause." I was, quite frankly, looking at some time during the week of August 22. After we have been out for three weeks, I think we should have an idea. Towards the end of the week of August 22 I would think we would have an idea then as to what we want to do next.

Mr. Chairman: Just so we are clear on this, so that Mr. Reycraft or any other member does not have to ask what the motion is, I am going to ask whether you want that in writing from Mrs. Cunningham so that it is clear.

Clerk of the Committee: Can I read to her what I have interpreted?

Mr. Chairman: All right. Perhaps the clerk will read it back to you and you can tell us whether it is correct or not.

Mrs. Cunningham: Fine.

Clerk of the Committee: "That the committee postpone a decision to travel outside the province to the week of August 22."

Mrs. Cunningham: Fine.

Mr. Chairman: All right. That is the motion. Has everybody heard the motion?

Mr. Reycraft: Does that mean the decision is going to be made during that week as to whether or not there is a need to travel outside?

Mr. Chairman: That is what I understand. Is everybody clear on what the motion is? Is everybody ready to vote?

Motion agreed to.

Mr. Chairman: That seems to eliminate the first item that we got onto with Mr. Philip in terms of the timing of it. I gather that you are no longer interested in discussing that.

Perhaps we could get onto an item that will be of some considerable concern. That is the question of advertising and the question of whether—and we will do this before we get to the places that we are thinking about going—it be dailies or weeklies. I suppose that would depend upon—

Interjection.

Mr. Chairman: Yes. First, though, I think I will have the clerk give you some idea of the cost of dailies and the cost of weeklies.

Mr. Cureatz: Could I switch on the air conditioner for five minutes?

Mr. Chairman: Sure, go right ahead, Sam. You can put your head out the window too if you like.

Mr. Ballinger: If you do that, you can light up my pipe.

Mr. Cureatz: No way.

Mr. Chairman: No way.

Mr. Cureatz: Is it the big switch?

Mr. Chairman: If you light up, you have put on the wrong switch.

Mr. Cureatz: I will stick my finger in here.

Mr. Chairman: Let's get back to order here. Can you tell them the cost?

Clerk of the Committee: If you want to advertise one time in all Ontario dailies, it runs you approximately \$13,000. If you want to advertise in all dailies and all weeklies, it will run you a little over \$30,000. If you wanted to advertise in the specific communities that you determine you are going to go to, I would have to call and get the breakdown of that. Each daily or each weekly varies greatly in its cost. I could not really determine it.

Mr. Chairman: So we are looking at between \$13,000 and \$30,000, depending on what—

Clerk of the Committee: Up to \$30,000 or \$33,000 maximum.

Mr. Chairman: Surely there should not be too much discussion on this, but I am going to recognize Mr. Pelissero.

Mr. Pelissero: Yes. Just speaking to how you get a better bang for your buck, I think once we have decided where the committee wants to go, I think you as a chairman should be free to issue a press release to that effect. All the dailies and weeklies would pick it up free of charge. They would not necessarily give the locations. They would just say, "They're coming to the area," and then we can decide on site and location. Either that, or if we have the sites and locations, we can announce that in a press release and the corresponding— First, a news release, then we will still have to advertise.

Mr. Chairman: I appreciate your frugality, but it has always been the tradition around here that we advertise.

Mr. Pelissero: No. I chaired a committee in which we reviewed crop insurance and we went across the province. We had the same problem. We got bang for the buck by the chairman announcing that these are the places we are going to be, so it hit the press twice. If we are not going out till the second week of August, you can issue a press release in July. They are going to run it twice.

Mr. Chairman: Is it agreed to by a consensus of the committee that we do that?

Mr. Pelissero: One is for nothing and we pay for the next one.

Mr. Chairman: All right. OK.

Clerk of the Committee: Do I understand correctly, Mr. Pelissero, that you want to go in all of the dailies once, and then a press release to the communities to which the committee determines it is going to go?

Mr. Pelissero: No. What I am saying is that once we have determined where we are going to go and you are able in fact to determine in some cases whether we are using council chambers or renting a hotel room someplace, we put that together in a package and you issue it as a press release. End of discussion.

Clerk of the Committee: Then what happens?

Mr. Pelissero: From that, once we have decided where we are going to go, you decide whether you advertise in a weekly or in a daily. I will give you my example in my area: I have two dailies, but there are places that do not get either, so you are going to have to hit the weekly.

Clerk of the Committee: You want to advertise in all dailies, advertise in the weeklies in the communities that you determine you want to go to—

Mr. Pelissero: That is correct.

Clerk of the Committee: —and issue a press release.

Mr. Pelissero: The press release first.

Clerk of the Committee: Press release first. OK.

Mr. Chairman: I think, though, what he is saying is that in the communities where they do not have dailies, that is where he wants to advertise in the weekly.

Mr. Pelissero: Yes.

Mr. Chairman: Not daily, plus weekly, plus press release. Is that right?

Mr. Pelissero: No. I am saying press release first; the process. You can say: "We're making a press release. This is where we're going to be going." No charge to the committee. You are just issuing a press release, right? The papers that are interested will pick it up. The papers which are not will not pick it up.

To cover it off, once you have decided where we are going to an area, then if there is a daily in the area, you are going to have to hit the daily and you are also going to have to hit the weekly.

Mr. Chairman: OK. Is everybody clear on what Mr. Pelissero is suggesting? Mr. Reycraft, you had your hand up.

Mr. Reycraft: I was going to try to be helpful again and just suggest that if we gave the information to the leader of the third party, the next time he does Provincial Affairs he can have the appropriate information flashed across the screen as he did last Saturday night, I believe, in advertising the telephone number of the clerk of the committee.

Mr. Chairman: I am not sure if that was helpful or provocative.

Mr. Reycraft: Oh. Sorry, Mr. Chairman. I was going to suggest that because of the cost, advertising once in the dailies should get the message across. That too has been used effectively by other committees. I think Mr. Pelissero's suggestion about using press releases to get the word out in the communities to which we are going to travel is a very good one. If we do that, I frankly do not see the need to advertise in the weekly papers.

Mr. Chairman: If I understood what he was saying, it was that we would advertise in weeklies where there was in fact no daily.

Mr. Reycraft: How does one identify that?

Mr. Chairman: I do not know.

Mr. Reycraft: There are weeklies all over this province where there is no daily paper.

Clerk of the Committee: The ad agency would have to determine whether a community was served by a daily.

Mr. Chiarelli: Do I understand Mr. Reycraft correctly that we should advertise in every daily and send the press release to every weekly and, therefore, the weekly is covered by the press release, every one, and you advertise in the dailies?

Mr. Chairman: No. My understanding of what Mr. Pelissero said was—

Mr. Chiarelli: No. I am talking about Mr. Reycraft's suggestion.

Mr. Chairman: He was just repeating, I thought, what Mr. Pelissero had said but was restricting it to dailies as opposed to weeklies.

Mr. Chiarelli: The advertising to dailies, the press release to weeklies, across the board.

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Mr. Chairman: Is that what you said, Mr. Pelissero?

Mr. Pelissero: This should be relatively straightforward. Once we have decided where we are going to go, we just issue a press release to all the weeklies and the dailies right across the province. The ones that are going to pick it up are going to pick it up; the ones that are not, are not.

We cannot force them to run the press release. We are just looking to get some pre-travelling hype. We then are going to have to determine, through an advertising agency, the best way to blanket the province in the way which is most fair, equitable and cost-effective.

Mr. Chairman: The clerk wanted to address that.

Clerk of the Committee: If you advertise in a daily and you advertise in the selected weeklies of the communities you determine you are going to and issue your press release, you will not have any flak. If you just send the press release to the weeklies in the communities, they are going to scream because they did not get the income and the dailies did. I think if you are going to advertise in the dailies and you want to send press releases, you have to advertise in the weeklies as well in the communities you intend to visit.

Mr. Hampton: I come from one of those areas which is not covered. The only daily newspaper we receive every day is the Winnipeg Free Press and that is true for a vast part of northwestern Ontario, yet you do have a chain of weekly newspapers. It is my understanding that advertising agencies—and I think we would deal with one of those—have records of this. They know what the coverage is in a given area and they know which newspapers to place ads in.

If I could give you an experience that just happened, the Workers' Compensation Board just did an assessment of the logging industry and placed advertising through some advertising outfit and was able to critically place advertisements in weekly newspapers across northern Ontario so that every community which needed to know about it knew about it and did not place them in, say, a newspaper in a mining community. I think the advertising agency has the kind of information we need to blanket the appropriate areas.

Clerk of the Committee: I think if you determine which communities you want to visit, I can go to the advertising agency and say, "Would you please give me the list of community weeklies this ad should go in to cover this area?" I think that is your most cost-effective way. As you indicated, they do have the figures to determine what is where and who is servicing what.

Mr. Philip: I hear a consensus with what Harry has suggested. I would only add that if we are holding hearings in Metro, I think we should also advertise perhaps in some of the ethnic newspapers because a lot of the merchants are Italian-speaking and Portuguese-speaking, for example, in the west end and their communities are directly affected. Some of the major grocery stores are owned by Canadians of Italian background and they would certainly be interested in this topic.

The other thing is that we have to decide which of the French-speaking newspapers we are going to advertise in. Le Droit in Ottawa is a must; that is the only French daily. We should have Le Droit plus the other dailies and perhaps one or two of the ethnic newspapers when we are talking about Metro.

Mr. Reyecraft: I do not think I can support this idea of going to selected weekly papers. First, we need to think about why we are putting the ads in. I assume we are doing it to invite submissions to be made to the committee and to invite people to request appointments if they want to actually make a presentation.

If you are doing that, you do not just put it in the weeklies in the areas where you are going to be because, hopefully, with the travel, we can

cover all regions of the province and be as accessible as we can to all communities. It would seem to me that if we are going to go to the weeklies, we would go to all of them with a schedule indicating when we are going to be travelling and where we are going to be and make the same invitation we are going to make in the dailies.

Mr. Philip: May I ask a question on that? Why would you want to put it in the weekly newspapers in those areas which, for reasons of remoteness or because they are already tourist areas, have had open Sundays and may not have anything new to offer? In Kenora, for example, the select committee found that when we put out feelers there was nobody who wanted to talk about the subject. If you are not going to go into a community, why bother spending money on the daily newspapers? You just have to assume that since the select committee did not get a terribly large amount of interest in those communities and cancelled our plans to go into them, this committee probably will not want to go simply to hear one presentation or something like that.

Mr. Reycraft: I think you have to assume that in virtually every community in this province there may be somebody who wants to make a submission to the province. I do not know how you ever decide which ones have them and which ones do not.

Mr. Philip: What do you do about the fellow in Kapuskasing if you advertise and the nearest town where you are going to have a hearing is 300 or 400 miles away?

Mr. Chairman: We are getting a little far afield here.

Mr. Reycraft: We are not addressing these ads only to the people who want to come watch the committee in action or to appear before it. We are also doing it for the benefit of those who may want to make submissions in writing to the committee. Therefore, it seems to me that you have to advertise right across the province.

Mr. Chairman: You have before you in your file a mock-up of what it would look like. Many of you would be familiar with that from other committees.

Ms. Poole and Mr. Pelissero, and then I think we are going to have to put something together here.

Ms. Poole: I am reluctant to sound like the conscience of the committee as far as our spending is concerned, but I notice that we have allocated in the budget \$30,000, which really is the cost of advertising in the dailies. Mr. Philip has recommended that in addition to the weekly newspapers, as recommended by Mr. Pelissero, we go into the ethnic newspapers. I think that is a very difficult judgement call to expect the clerk to make. In Metro, for instance, we have a vast number of ethnic newspapers, and I am reluctant to say you would be able to advertise in one and not another. It is not a decision I personally would like to have to make.

Mr. Chairman: It is not a decision the clerk would make; it would have to be made by the members.

Ms. Poole: As to which ethnic newspapers?

Mr. Chairman: That is a political decision.

Ms. Poole: Quite frankly, I think that advertising in the dailies is going to reach most people in Metro.

Mr. Chairman: Could we first deal with the question of dailies or weeklies? Obviously, we are not getting a consensus. Perhaps someone would move a motion and we will deal with that first. Mr. Pelissero, do you have your hand up to move a motion?

Mr. Pelissero: Yes.

Mr. Chairman: What are you moving?

Mr. Pelissero: I move that we would advertise in both the dailies and the weeklies.

Mr. Philip: That was not the original suggestion.

Ms. Poole: For \$30,000?

Mr. Pelissero: No, sorry. I will backtrack on that. My motion consists of two parts: (1) that we issue a press release once we determine where we are going to go and that press release be sent to all the weeklies and the dailies and (2) that we advertise—

Clerk of the Committee: All media?

Mr. Pelissero: All media; and the second part of the resolution is that we advertise in the weeklies and the dailies, as identified by the clerk, at a cost of about \$30,000.

Mr. Chairman: That is a double motion really. Do you wish to deal with it in totality?

Ms. Poole: Let us be flexible.

Mr. Chairman: Perhaps the clerk could read the motion so everyone is clear on what it is.

Clerk of Committee: All dailies, all weeklies and press release.

Mr. Chairman: That is right: all dailies, all weeklies and press release to the tune of \$30,000.

Mr. Philip: No. I am sorry, that was not his motion.

Mr. Chairman: That is what I get out of it.

Mr. Pelissero: We issue a press release once we have determined where we are going to go, and the second part was that we advertise in the weeklies and the dailies.

Mr. Philip: In those areas.

Mr. Pelissero: No, all; right across the province.

Mr. Philip: OK, so you have changed your motion.

Mr. Pelissero: Yes, right across the province. In rethinking, it may mean some additional dollars, but I do not want to run into a situation where

somebody can call my constituency office or your constituency office and say, "I did not know anything about it," and we cannot pull out a sheet and say, "Look, this was in the weekly and the daily." It may be costly but I think it is necessary.

Mr. Chiarelli: I was going to suggest that if the \$30,000 budget would accommodate additional advertising, we also advertise in any ethnic newspapers which are dailies or weeklies.

Mr. Philip: Or biweekly.

Mr. Chiarelli: I would say weekly, because then it gets to be too many.

Mr. Philip: The largest Italian newspaper that reaches a very large population in Metro is biweekly, is it not? It is every second day.

Mr. Chiarelli: It is daily.

Mr. Philip: Is Corriere Canadese daily now?

Mr. Chiarelli: Yes, it is daily now.

Mr. Chairman: Mr. Chiarelli, selecting the ethnic newspapers is really a political decision. It is not one that the clerk can make. She makes administrative decisions. If the committee wishes to expand it to the ethnic papers, we are going to be required to specifically tell the clerk what those papers are.

Mr. Chiarelli: My suggestion, first of all, is based on the assumption that there might be some excess of the \$30,000 budget. If not, just let the original idea stand.

Mr. Chairman: It would not make any difference. We would have to put in a supplementary to do that. The question of ethnic papers is something that you are going to have to specifically spell out if you want it done by the clerk. She does not make political decisions; she does administrative things.

Mr. Philip: Before we vote on it, just for clarification, I assume that included in all dailies is Corriere Canadese, which is a daily although it is also an ethnic newspaper, and Le Droit, which is a daily and not an ethnic but it is the only French-language daily newspaper in Ontario.

Mr. Chiarelli: Rather than make the assumption, why do we not just make the specific recommendation that they be included in the dailies?

Clerk of the Committee: There are lists, which I have upstairs, and they do include most of the weeklies. I would not take it upon myself to say that they include all of them. I would ask that someone from the committee review those so that you are sure it is going into the ones you want it to appear in, the ethnic papers. As far as all dailies, Le Droit is included in all dailies.

Mr. Chairman: We have had a significant amount of discussion on this. I wonder if we could leave it at all dailies and weeklies. We have the motion from Mr. Pelissero. Let us deal with it and if the lists that the clerk speaks of deal with that, those are the areas that we go to. Do we need a motion on it? You have heard Mr. Pelissero's motion.

Mr. Reycraft: Does the motion mean that we advertise once in each daily and once in each weekly?

Mr. Chairman: Yes, that is right. Are you ready to vote on it?

Motion agreed to.

Mr. Chairman: You have a copy of the draft of the advertisement before you. Are you content with the setup of it? Obviously, we have to agree on the timing for written replies as well as making appointments to come before us personally. Does the committee have any questions or concerns?

Mr. Pelissero: Just a question with respect to the second paragraph, which says, "Requests for appointments to appear before the committee to make an oral presentation should be directed to the clerk." Are we by inference leaving the impression that all requests will be granted an appointment before this committee?

Clerk of the Committee: That is standard wording. The committee can determine, if there are people left on a waiting list, whether you are going to sit in the evenings, whether you are going to sit Saturdays or Fridays to accommodate those people who may be left on the list, or whether you will ask those persons to make written submissions.

Mr. Chairman: All right.

Mrs. Cunningham: Do you want the dates filled in?

Mr. Chairman: I thought that first we would approve the draft and then we would deal with the question of dates. Do we have a consensus that the draft be approved? All right, now what about the dates?

Mr. Cureatz: Dianne is on holidays.

Mrs. Cunningham: I will try to work them out depending on what we have just decided. I thought Friday, September 23, was appropriate.

Mr. Chairman: That is for the written submissions.

Mrs. Cunningham: That is the first one. All briefs should be deposited with the clerk by then. That just beats the deadline of the clause-by-clause, but I will take direction on that.

Clerk of the Committee: The only problem with that is the problem that Susan may have in reviewing the submissions for a summary. I would think perhaps September 14, a Wednesday, could be the cutoff date so that Susan has enough time to work with the documents.

Mr. Chairman: Is September 14 agreeable as the cutoff date for written submissions? Is that agreed? All right. The second part is for appointments for oral presentations.

Mrs. Cunningham: How about Friday, August 5? Perhaps that is not soon enough.

Clerk of the Committee: If you are going to be sitting here, the first week in Toronto, and if you take the second week, which I understand to be in Toronto, for umbrella groups and that type of presentation, that would be a sufficient cutoff date to determine where you are going.

What I would ask also is, determining where you are going, you will have to determine where you would like to go and then, depending on the response that I get in my office, whether or not it would justify it. I think August 5 would be sufficient.

Mr. Chairman: Is August 5 agreeable to all parties here? Agreed.

Mr. Reycraft: Will that present any problems in scheduling? It seems to me that if there are decisions that have to be made about scheduling groups, about whether or not everybody who has requested to appear before the committee can be accommodated, we should be in a position to make those decisions the first week of August.

Mr. Philip: I think we have to give some people some time and I think we can use some flexibility. Most hearings will accept people who come in off the street as long as they have time. I have never seen a group turned away except where they were told, "I'm terribly sorry; you didn't give us notice. We have 14 people on the list ahead of you and the committee has a plane to catch at seven o'clock because we have hearings in Sudbury tonight," in which case people can understand that.

Mr. Chairman: I think the major concern here is that we have sufficient time for the advertising if the people will react to it.

Mr. Reycraft is saying, rather than August 5, perhaps three days before that. Is that acceptable? Is that what you are saying?

Clerk of the Committee: I think you need August 5. Count on three weeks from now before the ad can actually appear in the paper, and with the weeklies it may be yet another week after that.

Mr. Chairman: All right. August 5 is the suggested date. Are there any further comments? Is there consensus on that? Agreed.

Before we get into the one that perhaps will consume the balance of our time, can I have some guidance in terms of the amount of time for each appointment?

Clerk of the Committee: On the last set of hearings on this issue, on the road, most of the presentations were a little shorter; they were about 10 minutes. They were individuals who are not used to making presentations to committees, so their presentations were about 10, 15 minutes maximum. With those umbrella groups that are making their presentations here, you might want to allow them a longer time. I would think that, certainly on the road, 15 minutes is sufficient for each presentation.

Mr. Philip: You are going to have to allow a lot of time for some of the groups in Toronto because they are the umbrella groups that are going to come in with highly sophisticated, long presentations, with their lawyers or with various people with them. When you get on the road, 15 or 20 minutes and often people can—and then 10 minutes for questioning.

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Mr. Chairman: Well, what is the suggestion then? We can certainly be flexible, but we would like to have some guidance in terms of the clerk scheduling—

Clerk of the Committee: Would 15 minutes of time, on the road, to include—

Mr. Philip: Make it 20 minutes, I would think. .

Clerk of the Committee: Twenty minutes? That would include the question period as well. How long for the larger groups here in Toronto?

Mr. Philip: I think 45 minutes apiece.

Mr. Chairman: Is that agreeable?

Clerk of the Committee: Forty-five minutes?

Mr. Philip: It gives them a 25-minute presentation and then questions.

Mr. Chairman: So 20 minutes would be inclusive of presentation and questions on the road, and 45 minutes here in Toronto. Is there a consensus on that?

Mr. Philip: Yes, as long as we use some flexibility on the road. If we find, for example, that in some place we have only three presenters and you ask, "Is there anyone else here who wishes to make a presentation this morning?" and there is only one guy who says, "Yes, I don't have a presentation but I want to talk," you figure he is good for five minutes and then you give them a little bit more time.

Mr. Chairman: This is just for purposes of scheduling, really. We would be flexible in terms of that.

The other question is, in light of the short period you are giving for presentation and questions, would it be agreed that there would be a single question from each caucus group?

Mr. Pelissero: Play that by ear.

Mr. Chairman: Do you want to play that by ear as we—

Ms. Poole: What about having a rotation?

Mr. Pelissero: No. I think you have to use some flexibility. Obviously, if we are saying 20 minutes on the road and we get an organization or chamber of commerce, I do not know whether you could restrict them to 20 minutes, as opposed to an individual. I think the clerk is going to have to use some judgement in that area.

Clerk of the Committee: The chairman is going to.

Mr. Pelissero: Well, no, the scheduling, whoever is going to do the scheduling—to say to somebody, "You can have 45 minutes if you come to Toronto and if you happen to represent a Windsor business association or the Niagara Falls, Canada Visitor and Convention Bureau, you only get 20 minutes because you happen to be in Niagara Falls."

Ms. Poole: It is 45 minutes for the umbrella groups in Toronto, not for the individual presenters, I believe.

Clerk of the Committee: What you may find on the road, Mr. Pelissero, is that we will make up time. Some people will only take about 10 minutes and other organizations—you can schedule around them, so that you may have a chamber of commerce group making a presentation and you fit in two or three individuals. You allow the same time slot, but be flexible in that way.

Mr. Pelissero: Why do we not say to the groups and individuals, "Look, you're scheduled for 20 minutes. You have the committee's ear for 20 minutes. You can take 10 minutes of presentation time and we'll get into questions and answers, or you can spend the whole 20 minutes making a presentation which virtually leaves you no room for questions. If there are questions and there is time at the end of the day or at the end of the morning, then we'd come back"? That is the only way to be fair.

Mr. Chairman: The practicality of it is that this is the schedule that is set up by the clerk and then I usually tell them, as I think most chairmen tell the deputants: "This is the time we have allocated. You can use all of it if you like and we are flexible enough that if we have the time slots open, we will give you more time to speak."

Mr. Reycraft: I wonder if it might be appropriate to leave the scheduling to a subcommittee, a steering committee, to work with the clerk and with you? I agree with Mr. Pelissero that there are some groups that are going to want to come before the committee on the road that will need and should have more than just 20 minutes.

Clerk of the Committee: How would this be? If the clerk has difficulty with a group that feels it cannot make its presentation in the time frame allowed, perhaps the subcommittee could be made aware of it; if there is a problem, if there are not enough time slots available, consult with the subcommittee and take it from there.

Mr. Chairman: It sounds good to me. How about everybody else?

Interjection: Agreed.

Mr. Chairman: A marvellous suggestion.

Clerk of the Committee: Where am I going to tell the people answering the ad that we may be going?

Mr. Chairman: OK. Now, I am open for comments and suggestions from the members of the committee as to where we travel within Ontario. I have not circulated that, Mr. Philip.

Mr. Philip: Why do you not circulate that?

Mr. Chairman: All right. Do we have copies sufficient to circulate?

Clerk of the Committee: There was a combined list submitted by Mr. Philip, Mr. Cureatz and Mrs. Cunningham. I have in one group: Toronto, York, Mississauga, North York, Pickering, Oshawa, Bowmanville and Barrie; in the second group: Peterborough, Belleville, Kingston, Hawkesbury, Ottawa, Renfrew, Armprior, Picton and Brockville; in the third area: Hamilton, Welland, St. Catharines, Brantford, Cambridge, London, Windsor, Woodstock, Stratford and Owen Sound; in the fourth group: Sudbury, Thunder Bay and North Bay.

Mr. Chairman: I guess first off I should ask—Mr. Philip did give

that to me and we perhaps should have copies, so that they will all have them before them.

Mr. Philip: It is not fair to depict it as a list prepared by the NDP and the Conservatives. What happened was the Chairman said, "Do you think we can work on a list?" I simply looked at the province geographically and came up with a list of places. He and I discussed it and knowing Mrs. Cunningham would be on the committee, I asked her and she said, "Yes, but you have a few holes here and there are a few things you should add." She added a couple of things.

Mr. Chairman: But it is a combined list.

Mr. Philip: Yes, but it is not a combined list prepared by the NDP and the Conservatives; it is the chairman who is a Liberal, although a very nonpartisan Liberal in this position.

Mr. Chairman: We are having copies made, but in the interim—

Mr. Philip: It is a flexible list. I am not hard and fast on the list. It is just an attempt to try to deal with it geographically so that we are not spending a lot of time travelling back and forth over the same roads.

Clerk of the Committee: It works out to one week travelling around Toronto, out to York, North York and Mississauga, which would have to count as a week out of your Toronto schedule here. It works out to a rough week going east, a rough week going west and then a week of flying to Sudbury, North Bay and Thunder Bay.

Mr. Reyecraft: If we look at the time we have for travel, the budget suggests 16 days, and if we sat five days a week, that would be 20. That is not really a lot of time. I would hate to see us spend an undue part of it actually on the road going from place to place. It would make more sense to me to sort of look at the province on a regional basis, as Mr. Philip says he has done, and perhaps try to spend—we have four weeks, so a week in the southwest part of the province, a week in Central Ontario, a week in eastern Ontario and a week in northern Ontario, and maybe pick two or three places within each of those regions, so that you will only actually make one move, because it is more than just us travelling; there is the clerk and books and—

Mr. Philip: Once you get a bus on the road, it is just as easy to hit, say, Kingston and Brockville on the same day as it is to spend all day in Kingston and hope that some of the people will come from Brockville to Kingston or Belleville or somewhere like that.

Clerk of the Committee: You can comfortably do two communities that are reasonably close together. You can comfortably do those in one day. You can uncomfortably do three communities in one day. That means eating your sandwiches on the bus and getting up and travelling at 6 o'clock in the morning or travelling at 11 o'clock at night to the next community so we would be prepared for the next morning, but I think two communities a day is what you can look at.

Mr. Chairman: We need at least a common pause day anyway.

Mr. Cureatz: I think this is going to be one for the steering committee to sit down and come up—we have a feel for it. There is no magic to

it. It is a combination of moving the chess pieces around to come up with that kind of mix. I think we are all in agreement about that.

Mr. Chairman: The reason it was put to the full committee was that we had concern that this could perhaps not be arrived at by the steering committee.

Mr. Philip: I think our problem was that I did not want, as part of the steering committee, to have some member on the committee say, "Hey, why did you go around my community or my riding or whatever?" Some of you may have concerns that we are missing out on somebody.

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Mr. Cureatz: I did not know what to expect, but there seems to be amicable agreement on approaching it that way.

Mr. Pelissero: I can try and get a list. For example, I covered the province in January, February and March 1987 for the Canada-Ontario Crop Insurance Review Committee. We had the same concerns in terms of making sure we touched base with the north, south, east, west, southwestern Ontario, the far east, and we covered it in about a five-week period. I can get the exact locations to the chairman in terms of the exact—different reasons, but basically the main centres that we are looking at.

Mr. Chairman: You are now getting delivered to you a copy of the list that was handed to me by Mr. Philip.

Mr. Philip: When it says "group 1," what it really should say is "area 1."

Mr. Pelissero: Week what?

Mr. Philip: I put "group 1," but I really meant "area 1."

Mr. Pelissero: During that week, cover those groups?

Mr. Philip: Group 1 is really two weeks. I was not suggesting we have subcommittees or anything like that.

Ms. Poole: I was struck, when I was listening to the northern group, and to some of the other groups, that you see cities on there that we seem to travel to with every committee. The last time the justice committee travelled, when we went up north, we went to Sudbury and Thunder Bay. We are doing the same for the select committee on education. I was wondering if, perhaps, instead of that, maybe we could mix and match, and go to Parry Sound instead or Timmins, Thunder Bay, North Bay. North Bay is a good addition; we have not been there. I do not know whether that—now that Parry Sound is officially part of the north as far as the government is concerned, maybe it would be a nice welcome to go and visit them.

Mr. Philip: I think one of the problems you are going to find is that a lot of the really isolated communities do not care about the issue mainly because, under this legislation, if they want to stay closed or if they want to remain open, they are not going to be pressured by any adjoining communities. Therefore, it becomes a nonissue.

Ms. Poole: I am not sure Timmins would consider itself to be an isolated community.

Mr. Philip: Isolated from other adjoining communities. They do not have communities that may decide to stay open on Sundays and affect their decisions. Those are the communities that are concerned about them, at least that is what my mail is coming from.

Mr. Chairman: I should add at the outset that the clerk showed me a number of letters from individuals who seem to call us to all and sundry, every little nook and cranny. I am sure that is not possible in the time frame. I think we should try to zero in on this and perhaps get it ironed out. Before I make the suggestion I was going to make, Mr. Reycraft.

Mr. Reycraft: I think we need to be careful that we do not try to do too much in terms of spreading ourselves out across the province. We will end up wearing ourselves out and not getting as much time as we otherwise could to actually listen to people giving us their opinions on the legislation. I would much rather take a look—I do not think we need to wait for a steering committee to do it—at the southwest and decide, if we are going to spend a week there, on two or three places, perhaps, in southwestern Ontario where we can go.

There is another reason for making these decisions very soon, and that is that the clerk is going to have to start making reservations for us and arranging accommodation.

Mr. Chairman: We would have to know, even if we went to a subcommittee, before Thursday of this week. Do you want to try that? Let us try southwestern first.

Mr. Philip: If we try southwestern, then you have group 3, and basically you have two weeks of work there.

Mr. Reycraft: I will go back. We have agreed, I think, that we are going to have four weeks to travel. I assume that means the other two weeks are going to be spent here in Queen's Park, holding hearings in the Metro area.

Mr. Philip: You have two weeks in Metro, including your briefing. One is a short week.

Clerk of the Committee: And a week for clause-by-clause. That is three weeks.

Mr. Chairman: And a week of briefings.

Mr. Philip: No. The week of briefings is part of the Metro. You have two days of briefings and the other two days—

Mr. Pelissero: For the first week, Monday is a holiday.

Clerk of the Committee: We will sit Wednesday and Thursday of that week on briefings. That was determined. Then you have the next week in Toronto.

Mr. Philip: So you are not going to sit on the Tuesday.

Clerk of the Committee: It was determined when we were discussing it that you would sit on Wednesday and Thursday for briefing. That is one week

gone. Then you have one week here for umbrella groups and one week here for clause-by-clause. You are reserving from August 22 and the week of September 19 for possible travelling. That leaves you four weeks for travelling throughout Ontario.

Mr. Reycraft: I do not think we can afford to spend two weeks in southwestern Ontario if we are going to cover the province.

Clerk of the Committee: You have got one week in each group. I can pick key areas and set up key areas that are accessible for most of these communities. I have done the circuit enough times that I know most of them. After I determine which ones I can set up hearings in, I would like to run it by a subcommittee or somebody before I make the final decision. For example, in group 2, I would look at Kingston, Ottawa and Arnprior. Peterborough you would almost have to do on its own. So you are looking at four communities there, which would be a day in each one. Into Kingston, you have Picton, Brockville, Belleville and Kingston. Ottawa—you can take in Hawkesbury—

Mr. Pelissero: Renfrew.

Clerk of the Committee: You can take in Renfrew and Arnprior. Belleville can go into Kingston, and Peterborough. So you could do just Ottawa, Kingston and Peterborough and that could be done in a week and that would service all those areas.

Mr. Pelissero: You have Arnprior as well.

Clerk of the Committee: If you do Arnprior, then Renfrew can go to Arnprior, but Ottawa is as easily accessible to Arnprior as it is to Renfrew.

Mr. Chairman: Mr. Reycraft, do you want to speak to group 2?

Mr. Reycraft: I need some help. If we spend four weeks travelling outside Queen's Park, how much time will that leave us for hearings here?

Clerk of the Committee: Only one week and the week of September 19 if you determine you are not going to travel to other jurisdictions from August 22. That leaves you two weeks here.

Mr. Chairman: One week sure; possibly two weeks.

Mr. Reycraft: Why could we not spend one week in southwestern Ontario, one week in two or three places in central Ontario, another week in eastern Ontario and a week in the north? Can I make that as a suggestion?

Mr. Pelissero: Sounds good.

Clerk of the Committee: In these groups I have outlined?

Mr. Reycraft: I have not had a chance to look at the groups. I did some—

Mr. Philip: I do not think you are going to need a week in the north.

Mr. Pelissero: Could we charter a plane?

Mr. Philip: Unless you want to go into Kenora or some of these places—

Clerk of the Committee: You could go in on Labour Day weekend. When it is a short week, you have only three days.

Mr. Chairman: Let's not get into when we are going in. Let's try to stick to the—

Clerk of the Committee: I would think one day in Sudbury, one day in Thunder Bay, one day in North Bay, and you might want to look at Timmins. Covering those, that is four days.

Mr. Pelissero: There is your week.

Mr. Reycraft: I was thinking how we might use our time in the north. I can see our spending a couple of days in Sault Ste. Marie and let groups come from some of the other areas to us, a couple of days in Thunder Bay and use the week that way.

Mr. Philip: From my experience of being on the other committee that went around and advertised and so forth, I think you are going to find that Thunder Bay and Sudbury will create the most interest. We went into Sault Ste. Marie and we had trouble finding anybody who wanted to talk to us.

Mr. Ballinger: We know why.

Mr. Philip: But if for whatever reason—I am not arguing the reason—it did not create any interest—

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Clerk of the Committee: If the interest is not there, if the response is not there from the ad, I will be informing the committee that the response is not there. I think you have to determine that if the response is not there, if there are only two or three, you might want to bring them to another community instead.

Mr. Philip: We have not tried North Bay and we have not tried Timmins, so I suggest we do those.

Mr. Chairman: We have had a couple of suggestions. I have a number of speakers.

Mrs. Cunningham: I think we are going to be here an awfully long time if we start deciding just exactly where we want to go. I like the idea that Doug raised, that is, to give each group a week and let the administration decide and give us some kind of schedule. She will be able to change it based on some of the feedback and leave it open that way. I think it is a good concept. I just think it is going to be tricky depending on what kind of response we get, so let's look at it then. I do not think we should be spending all this time deciding now. The clerk, obviously, has had a lot of experience in travelling about. She said five times why we cannot do something.

Clerk of the Committee: If you leave the final decision to determining which communities you want to hold the hearings in, the only difficulty I have is setting up a place to have those. For example, if you determine that you want to hear from all these people in group 3 but you are

going to hear from them in Windsor, London and Hamilton, that would pretty well cover the southwest and be close enough to those other communities.

Mrs. Cunningham: I understand the risk we are taking, but if we have given you only five days for one area, geographically you are going to decide which five we can really do. That is what it really comes down to, somebody making that decision, looking at how many miles apart we have to go.

Perhaps that one day we would sit morning, afternoon and evening in one area because we cannot do, for instance, Woodstock. You might make that decision. Then we would have to give those people—that would be a longer day. I think you are the one who has to take—somebody has to take it and decide how long we have to travel and where we are going, given the principle that you presented earlier.

Mr. Chairman: Could I inquire if the vice-chairman is here, in the event I am called out? Who is the vice-chairman? I cannot remember.

Clerk of the Committee: You could have an acting chairman. Dianne could come in.

Mr. Chairman: Are you finished, Mrs. Cunningham?

Mrs. Cunningham: Yes, I am.

Mr. Pelissero: I agree with parts of your suggestion in terms of allowing the clerk to make some initial decisions. My reservation is that as soon as we publish a list, somebody is going to say, "Why aren't you coming here?" We or the chairman or somebody had better be able to make or defend that decision. Also I have sat in on a committee where there was enough pressure created that we had to go to an additional sitting.

As long as we realize going in that it may not be the hard-and-fast list—if we have said we are going to spend a week in southwestern Ontario and in fact we go to Woodstock and not to London, for example, and we expect the London people to come to Woodstock—as long as we know that going in, then I can live with your suggestion.

Mr. Reycraft: I think we can go ahead and identify the places—

Mr. Chairman: I cannot hear you because of the map.

Mr. Reycraft: I do not see why we cannot go ahead and identify the cities and communities we are going to visit now. The clerk is going to have a heck of a time making those decisions if we do as Mrs. Cunningham has suggested and leave it for her to decide after the submissions come in.

Mrs. Cunningham: That is what we attempted to do with the list, Doug. We took the map out and tried to make it geographically convenient for everybody.

Mr. Chairman: I think the clerk has indicated that the difficulty with that is that if she waits until the submissions come in, she will have difficulty in terms of setting up places to sit, places for us to lay our weary heads and so on.

Clerk of the Committee: For example, from each grouping, if you

could give me three main communities to work from. If there is a greater response from another area, I can let you know.

In the last set of hearings, the committee's ad did not get in in time and there was no response from the Niagara Falls area. The committee had to cancel, and there was a hassle about it. There was a lot of flak about it because the committee had to cancel. It had indicated it was going to that community and then it had to cancel. I think once you have indicated you are going to be in a community, you have to go into it.

Whether or not you want to add some to it, if there is sufficient response from a community, may be something that you would have to determine from your time frame. But if you can indicate to them you are going to go into those areas, they will be prepared to go to those areas because they know you are going to those areas and are close to them.

Mr. Reycraft: I would like to suggest that we take it region by region and identify three communities—

Mr. Chairman: Why does somebody not take the bull by the horns and throw out those names and let us find out whether we have a—

Mr. Reycraft: All right. I will suggest for the north that we agree to spend a day in Thunder Bay, a day in the Sault and a day in North Bay.

Mr. Philip: Why not Sudbury?

Mr. Reycraft: First of all, by going to the Sault and North Bay, we spread ourselves out across the north better. Second, the select committee—I may be mistaken—has been to Sudbury. I am not sure whether it has been to the other communities or not.

Mr. Philip: The fact is that the select committee found that there were more presentations, more people interested in talking about the issue in Sudbury than in any other city.

Mr. Reycraft: Good. Then we can go back and review the report of that committee and visit a couple of other places instead.

Mr. Philip: If you had reviewed the report of that committee, then you would not have introduced the legislation in the first place.

Mr. Reycraft: I would suggest that we review the observations, not necessarily the conclusions.

Mr. Philip: No, I will not accept that we not go to Sudbury. It is just too important a city to leave off our list.

Mr. Chairman: Let's work at this a bit at a time. Is there a consensus about Thunder Bay and the Sault?

Mr. Philip: I do not think you are going to get any—

Mrs. Cunningham: I think you are wasting your time with the Sault, from what I have read from the other select committees.

Mr. Chairman: All I am trying to find out is whether there is a

consensus. Mr. Philip has said that he wants to go to Sudbury. I just want to find out if there is a consensus on Thunder Bay and the Sault.

Ms. Poole: Has there not been a change in the Sault since the last time the select committee was there? Is the Sault not the municipality that recently introduced a one-year trial period?

Mr. Philip: It had done that before.

Mr. Chairman: Mr. Reycraft has taken the bull by the horns in the north. He wants Thunder Bay, the Sault and North Bay, and Mr. Philip wants Sudbury. Are we agreed that those will be the four possible scenarios for the north? Is there a consensus at least that far? OK, let us try to put that one to rest first.

Clerk of the Committee: Group 3.

Mr. Chairman: Yes, group 3.

Mr. Philip: May I suggest that we add to that, since it is easy enough when we are flying around, and add Windsor because southwestern Ontario is just too heavily booked to do that.

Mr. Chairman: I am sorry. Where are you? I am trying to deal with—

Mr. Philip: Northern Ontario.

Clerk of the Committee: You already have four days. You have Sault Ste. Marie, Thunder Bay, North Bay and Sudbury.

Mr. Philip: You are not going to need a full day for Sault Ste. Marie.

Mr. Chairman: We do not know that yet. We do not know how many days we are going to need any place. But can we deal with the north first? We are going to have to do it by vote, obviously, because there does not appear to be a consensus on the mixture. Let us try Thunder Bay, the Sault and North Bay first. Is that agreeable? Then we will try a vote on Thunder Bay, the Sault and Sudbury. How does that sound?

Clerk of the Committee: We seem to have a consensus on Thunder Bay and North Bay. Why do you not—

Mrs. Cunningham: Why do you not put the four in? I am sure we can fit them in over three days.

Mr. Chairman: The only thing is that I have found, on the committees I have been on, and I think this is right, Sudbury is very difficult to get to.

Clerk of the Committee: In the winter.

Mr. Chairman: Is it only in the winter that is difficult? OK.

1700

Clerk of the Committee: Yes. They do not have—

Mr. Chairman: All right. OK.

Mr. Hampton: As one who travels this route a lot, it is no problem getting into Thunder Bay in the morning. There is no problem getting from Thunder Bay to Sault Ste. Marie in the evening. There is no problem then flying from the Sault to Sudbury and there is no problem getting from Sudbury to North Bay. It is only an hour-and-15-minute drive. Then there is no problem getting from North Bay back to Toronto, if you do it in that order. If you try to do it in the other order, it is a different story.

Clerk of the Committee: It is a problem.

Mr. Pelissero: I am assuming we are going to charter a plane for this.

Clerk of the Committee: No, we cannot.

Mr. Chairman: No.

Clerk of the Committee: We travel commercial always.

Mr. Chairman: Commercial aircraft, yes.

Mr. Pelissero: It is cheaper to—

Clerk of the Committee: We always travel commercial.

Mr. Pelissero: No, no. I did not ask that question. Is it cheaper to go commercial?

Clerk of the Committee: That is not the problem.

Mr. Pelissero: Oh.

Mr. Chairman: We would have a plane waiting for us as we listened to the delegations.

Mr. Pelissero: No. If that is the impression you want to leave, I mean if that is what you want the natural break to be, but in terms of—

Mr. Chairman: I do not want to interrupt you, Mr. Pelissero, but I think we have to get back on this track.

Mr. Pelissero: OK. I will back off.

Mr. Chairman: Northern Ontario then. You heard the suggestion of four. Is there a consensus on that or do you wish to have a vote on it?

Mrs. Cunningham: Here is somebody who travels who has told us how to do it. Everybody gets his choice then.

Mr. Reycraft: I had suggested three places. My instinct is that—

Mr. Chairman: Sorry, Mr. Sola. I did not get to you, but I will.

Mr. Reycraft: —we should stick to three rather than trying to travel every day. My preference would still be to go to the three that I mentioned. Mr. Philip has indicated that there was a heavy response when the

select committee was in Sudbury. I suspect we will hear much the same thing from many of the same people. It seems to me that it is better to try a different spot.

Mr. Philip: The people who are on this committee are different from the people who were on that original committee with one exception. Sam, were you on the original committee? Sam is not here. He is speaking in the House at the moment; I understand.

Mr. Ballinger: Oh, no. I am glad I am in here.

Mr. Philip: I mean there is no guarantee that it will be the same people and maybe the same groups, but it may be different people. I just do not know how you could possibly imagine ignoring a major city in northern Ontario like Sudbury. It is just unreasonable to me to do that.

Mr. Chairman: I have Mr. Sola first. Mr. Sola, you had your hand up and I did not—

Mr. Sola: Mr. Hampton said what I was going to say.

Mr. Chairman: Good. Mr. Hampton again and then I think we have to make a decision, either by consensus or by vote.

Mr. Hampton: Sudbury is the most popular city in all of northern Ontario. It is also the city which is most easily reached in terms of transportation and it works from both north, west, east and south. I speak there of communities like Espanola or communities like Gogama, Chapleau, Parry Sound and the rural communities located between Sudbury and North Bay. I do not understand why we would go to northern Ontario and leave out the most populous place and a transportation centre.

Mr. Chairman: All right. Since there does not appear to be a consensus, I am going to now ask for a motion on each one of these and we will take a vote on it. There is not much point in going around the horn again.

Mr. Reyecraft: I have listened to the members, Mr. Chairman. My suggestion in the beginning was that we visit three spots. I said that my instinct is to keep it to that. I would suggest then that we take North Bay out of that group and schedule the three.

Mr. Chairman: What three are they?

Mr. Reyecraft: Sudbury with the Sault and Thunder Bay.

Mr. Chairman: All right. First of all, it has changed a little. Do we have a consensus on that?

Mr. Pelissero: What were the three?

Clerk of the Committee: Sault Ste. Marie, Thunder Bay and Sudbury.

Mr. Chairman: The Sault, Thunder Bay and Sudbury.

Mr. Philip: I am not clear why you are moving that motion because one day in each only gives you four days. You are not going to have any one of these that is going to take more than one day. It is easy enough when you are

finished your hearings to fly to the next city. I do not know why you want to scratch off North Bay.

I mean I could see if you want to substitute some other city for North Bay, Sault Ste. Marie or something like that, but I think four cities is not burning our candle at both ends the way that the select committee did when we tried to do two or, in one case, three cities, Sault Ste. Marie, Thunder Bay and Sudbury, in one day. Needless to say, in Sudbury we were hearing people after midnight.

Mr. Chairman: It does not appear that there is a consensus. I wonder if we could take a vote on that.

Mr. Philip: I move that the four cities be Sudbury, Thunder Bay, North Bay and Sault Ste. Marie.

Mr. Chairman: OK. That will be the second motion. Mr. Reycraft has already moved three. I gather we do not have a consensus to go to four. Am I clear on that? Mrs. Cunningham had her hand up before—

Mrs. Cunningham: Only on a point of information. When we looked at this and where we wanted to go in the Progressive Conservative caucus, there were two cities based on the input that we had. Just for the committee's information, North Bay has had a lot of interest and has sent a lot of petitions. The other one is the regional municipality of Sudbury, which is in fact at this time reviewing its own potential legislation. I think, from our point of view, given the work we did to see where the interest was, those two cities are important to us.

Mr. Chairman: OK.

Mrs. Cunningham: If that is of interest to the whole group, we have tried to do our homework and those are the two that responded.

Mr. Chairman: You are speaking to the motion that will be next, Mr. Philip's motion, that we go to all four, but for the moment—

Mrs. Cunningham: I guess so.

Mr. Chairman: If we do not have consensus, are we going to vote on your motion?

Mr. Reycraft: Being a usual agreeable and co-operative fellow, Mr. Chairman, I will withdraw mine.

Mr. Chairman: We have consensus, I gather, do we? All right. We have finished the north and we have consensus that it will be Thunder Bay, the Sault, North Bay and Sudbury.

Interjection.

Mr. Chairman: I have to go to the board. Can someone fill in here as chairman? We only have three more pillars of Ontario to clarify.

Interjections.

Mr. Philip: What week then do you want to do northern Ontario just so that we can—can we agree on that?

Clerk of the Committee: The first week after Toronto.

The Acting Chairman (Ms. Poole): We do not have to decide that now, do we?

Mr. Philip: The first week after Toronto? That is the week of—

Clerk of the Committee: Could you leave that to me to determine, depending on what arrangements I can make, what travel arrangements, what hotel arrangements, etc.?

Interjection.

Mr. Philip: Some of us who are serving on other committees will want to know fairly soon, though.

Clerk of the Committee: I will let you know as soon as I can get in touch with hotels for meeting places and flights.

The Acting Chairman: Can we now move to group 2? I think the clerk had already suggested three possibilities of Peterborough, Kingston and Ottawa. Is there any discussion?

Mr. Hampton: I would like to add Brockville for two reasons. One is that we have a number of communities in that corner of the province that are a fair distance away from Ottawa and are more easily reached by Brockville.

Clerk of the Committee: You mean Brockville rather than Kingston?

Mr. Hampton: No..

Clerk of the Committee: Because Brockville is only 20 or 25 miles from Kingston.

The Acting Chairman: It is very close to Kingston.

Clerk of the Committee: Brockville, Belleville and Picton are all—

Mr. Hampton: Brockville is further than that.

Clerk of the Committee: Not much.

Interjection: East.

Clerk of the Committee: Not very much.

Mr. Hampton: Have you got the mileage thing on the corner? You could look at your map.

Clerk of the Committee: It is less than an hour's drive.

Interjection.

Clerk of the Committee: Much less.

Mr. Hampton: Then I would say Cornwall.

Clerk of the Committee: Cornwall instead of Kingston. Then you have a two-hour drive from Kingston. Cornwall could go comfortably to—

Mr. Pelissero: He is saying Cornwall, Ottawa, Kingston and Peterborough. What was the other one?

Mr. Hampton: Peterborough. Ottawa to Cornwall is about—

Clerk of the Committee: Seventy miles.

Mr. Hampton: About a two-hour drive?

Clerk of the Committee: Seventy miles.

Mr. Hampton: Cornwall to Kingston, Kingston to Peterborough.

Clerk of the Committee: Cornwall to Kingston is about 120 miles. I am not sure of the cross-country bit from Kingston to Peterborough. You have to go down Highway 401 and then up the other highway. I cannot think of the name.

Mr. Hampton: Kingston and Oshawa, Oshawa to Peterborough.

Mr. Reyecraft: Madam Chairman, I sense what we are getting into here is the sort of thing I was concerned about before where we are trying to go virtually everywhere within the region. I assume that we are going to want to go to Ottawa.

Clerk of the Committee: Yes. That will take in Hawkesbury, Renfrew, Arnprior and—

Mr. Pelissero: Cornwall.

1710

Clerk of the Committee: It takes in Cornwall too. Cornwall and Renfrew are about the same distance from Ottawa.

The Acting Chairman: In fact, we may have more than one day in Ottawa.

Mr. Reyecraft: They are so close, I do not think we need to go to either of those.

Mr. Philip: One day, one complete day. Ottawa has never heard about the province of Ontario parliament.

Clerk of the Committee: The province of Ontario what?

Mr. Philip: Parliament of the province of Ontario.

Interjection: We should go and tell them about it then.

Mr. Reyecraft: If we did Ottawa, Kingston and Peterborough, it is a matter of limiting it to those three.

Mr. Hampton: In that case, I would add Oshawa.

Clerk of the Committee: That is in that other group, group 1, the Toronto group.

Mr. Hampton: Pickering.

Clerk of the Committee: Pickering, Oshawa and Bowmanville really could all go to Peterborough if you wanted them to. But I think Pickering, Oshawa and Bowmanville in one of those three communities would probably be best suited in that other group, which I do not think we should discuss while we are discussing group 2.

Mr. Hampton: I am just trying to fill out the week, to provide us four good places to go to.

Mr. Reycraft: I caution Mr. Hampton, and I am sure Mr. Philip will concur, that if you are going to try to hit 16 spots in 16 days—

The Acting Chairman: It is going to be very tiring.

Mr. Reycraft: —you are going to be ready for that caucus retreat in the first week in September and you will not be able to get there.

Clerk of the Committee: Remember that—

Mr. Reycraft: There is nothing wrong with spending two days in one place.

Clerk of the Committee: In these areas too, keep in mind that you are going to be travelling by bus.

Mr. Philip: We can fly into Ottawa surely. One of the things I am—

Clerk of the Committee: You can fly into or out of Ottawa. You can start in Ottawa but you are going to be travelling the rest of the way by bus.

Mr. Philip: To make it easier on the committee, I am just saying that Ottawa should be either at the beginning of the week or at the end of the week so you can fly home.

Clerk of the Committee: The one thing about Ottawa is that I am going to have trouble getting a meeting room in Ottawa. Ottawa is always busy. I will be able to put Ottawa either at the beginning of a week or at the end of a week and then go from there.

The Acting Chairman: Might I suggest that we centre on the three that we seem to have agreement on and the subcommittee can look at whether a fourth location is desirable? Is there consensus on that?

Clerk of the Committee: Peterborough, Kingston and Ottawa?

The Acting Chairman: Is there consensus on that?

Mr. Reycraft: Are we agreeing on three?

The Acting Chairman: We are agreeing on three, and should the subcommittee decide on a fourth one, that would be its prerogative.

Moving on to group 3, suggestions for group 3 of three to four centres?

Mr. Pelissero: In one week or two?

The Acting Chairman: In one week.

Mr. Philip: If correspondence means anything on this issue, Cambridge and Welland are two areas where you are going to have a lot of people who are going to be very annoyed if you do not let them have their say.

Clerk of the Committee: From the requests that I received asking for the committee to appear, if it means anything, I have Kitchener in that area and Windsor and several communities around the Windsor area. I have Stratford.

Mr. Ballinger: Can I just make a general comment? I am following up your comments. The purpose of this surely is not, in my opinion, to hit every hot spot in Ontario; the purpose is to give reasonable access. If we are going to start saying, "Let's got to Cambridge because it's hot and Welland is hot and London is hot," I think that defeats the purpose of the whole thing. If you give reasonable access to those areas of interest, the people will come.

Mr. Philip: I think the purpose of the committee travelling, though, is to give access to people or companies that have shown an interest in an issue, where it is unreasonable to expect them to come to Toronto to meet with us. All I am saying is, and Dianne made a similar argument when we chose North Bay, it seems to me there is an awful lot of interest in Welland and in Cambridge.

Mr. Ballinger: How far is it from Welland to Cambridge? It cannot be very far.

Mr. Philip: About an hour.

Mr. Pelissero: A good hour and a half.

Interjection: Cambridge is on Highway 401 and Welland is down on the Queen Elizabeth.

Mrs. Cunningham: It is just a hard one to get to Welland. What about either Welland or St. Catharines?

Mr. Philip: The people from St. Catharines will go to Welland.

Mrs. Cunningham: That is right. That is what I am saying, either one.

Mr. Philip: So you could have Welland but advertise in St. Catharines. You could have Welland for one—

Clerk of the Committee: We are advertising in all weeklies.

Mr. Philip: I know.

Mrs. Cunningham: Will Brantford go to Welland?

Mr. Pelissero: No.

Mrs. Cunningham: Where will Brantford go?

Mr. Pelissero: Brantford will either go to Hamilton or Kitchener.

Mrs. Cunningham: Hamilton, OK. I have a suggestion for four then.

Mr. Ballinger: I think Hamilton, Welland and St. Catharines is one centre.

Mrs. Cunningham: Hamilton, Welland, St. Catharines, one centre?

Mr. Ballinger: I think so. It appears logical to me.

Mr. Chairman: Just a second now. I am just getting acclimatized to the chair. One voice at one time or we are going to drive this young fellow here crazy, and the other thing is we are not going to get anything done.

Mr. Ballinger: I was just trying to bring the debate into some reasonable resolution.

Mr. Chairman: I am going to take the list: Mrs. Cunningham, Mr. Hampton. Did you have your hand up, Mr. Ballinger?

Mr. Ballinger: I have made my point.

Mrs. Cunningham: Building on the point, coming from Windsor and driving a lot—and Doug may suggest otherwise—Windsor, then London, then I would say Cambridge because that is halfway to Toronto. Then we get down into the Niagara Peninsula, and I do not care which one of Hamilton, Welland or St. Catharines. Maybe you would know best where—

Mr. Reyecraft: I agree with Windsor and London. What about going to Brantford and then to somewhere down in the Niagara Peninsula?

Mr. Pelissero: Welland will come to St. Catharines.

Mrs. Cunningham: Cambridge is a bit tricky, that is all.

Mr. Pelissero: No. Cambridge will come to Brantford. It is right on the line there.

Mrs. Cunningham: Will it?

Mr. Pelissero: You can go to Windsor, London, Brantford, St. Catharines.

Mr. Chairman: Can we stop right there? Do we have a consensus on Windsor, London, Brantford and St. Catharines?

Mrs. Cunningham: Where is Flamboro?

Mr. Pelissero: They would come to—

Interjection: Hamilton.

Mrs. Cunningham: OK. I am just covering.

Mr. Chairman: Do we have a consensus then to nail this down? Do we have a consensus on Windsor, London, Brantford and St. Catharines. Is there a consensus on that? Agreed.

What is the next item we have?

Clerk of the Committee: Group 1.

Mr. Chairman: Group 1, Toronto.

Clerk of the Committee: I suggest that you take Toronto off that list because you have time set aside for Toronto itself.

Mr. Chairman: The clerk has made a very wise suggestion that we take Toronto off since we have that already scheduled for a week or perhaps two weeks, depending on whether we travel outside the province. What about the balance of group 1?

Mr. Ballinger: Where is York?

Clerk of the Committee: East York? Where is York?

Mr. Philip: York is in southwestern Metro.

Mr. Pelissero: It goes as far as Newmarket.

Mrs. Cunningham: No, that is North York.

Mr. Reyecraft: There is another area we have not touched. I would like to suggest that we go up to Collingwood and over to Orillia.

Mr. Philip: If we are going to do that, then we better do Barrie as well.

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Mr. Chairman: You have Collingwood and Orillia and Mr. Philip has added Barrie.

Mr. Philip: You have just added another week.

Mr. Pelissero: To make that part of your group 1, you have to extend it.

Interjections.

Mr. Chairman: Just a second, through the chair, please.

Mr. Reyecraft, there has been a suggestion of Barrie as well.

Mr. Reyecraft: No, I do not think so. Barrie is halfway between Collingwood and Orillia. I suggest if we do those two that we will cover off the people in the Bruce Peninsula, Owen Sound, all that area. They can come to Collingwood, and then the Orillia stop will let us cover Huntsville,

Bracebridge, Gravenhurst, all that area. We might be there a couple of days because there is that whole area which we have ignored completely.

Mr. Chairman: The chair has before it Collingwood and Orillia with an addition of Barrie. Is there consensus on that?

Interjection.

Mr. Chairman: It is indicated that Orillia is quite close to Barrie.

Mr. Philip: My feeling is that if you do Barrie, you can attract people from those areas. They are not that far.

Mr. Reyecraft: You look at Barrie. There is the road map.

Mr. Hampton: I think we are in danger now of trying to get to every community in Ontario.

Mr. Chairman: That is right.

Mr. Hampton: If there is a central community there, it is probably Barrie which draws easily from Collingwood, Orillia, Bracebridge, Gravenhurst, all those places.

Mr. Chairman: It is a little removed from Owen Sound, though. It is not on line with Owen Sound. You would have to go over to Collingwood or further than that, actually.

Mr. Philip: Why not do Barrie and Owen Sound then?

Mr. Chairman: Just a second, we now have three scenarios here. Mrs. Cunningham, you had your hand up.

Mrs. Cunningham: Just from someone who does a lot of work out of all those areas or did until I started spending a lot of time here, Barrie is where everybody is used to going to and, as far as our travelling goes, it is really tricky on those roads to go to any of those other communities. That is extremely time-consuming. What looks a short distance—

Mr. Pelissero: It is summer, not winter.

Mrs. Cunningham: No. Summer and winter. Barrie would catch everybody. The one that is confusing me is the point that someone made about Owen Sound. I do not know what to say about that other than to take a look at what kind of response we get. Leave it the same as we did with group 2.

Mr. Chairman: As an avid skier, I would say Collingwood and Owen Sound are in closest line. You would have to go east to Barrie. Can we get a consensus on this? We only have this last one to do.

Mr. Reyecraft: I have tried to be very accommodating in the other areas. On this one, I feel very strongly that we should visit the two areas of Collingwood and Orillia.

Mr. Chairman: All right. Do we have a consensus on Collingwood and Orillia? I am not sure whether you can be heard or not because you have the map in front of the microphone and you are standing up. Mr. Reyecraft has

suggested Collingwood and Orillia. Do we have a consensus on that, or are we going to vote on that? Will you put that in the form of a motion?

Mr. Philip: Why go to Orillia instead of Barrie? The people from Orillia will come to Barrie. That is their shopping centre.

Mr. Chairman: We will get to yours. I gather from Mr. Reycraft's comment that he is not prepared to change it to Barrie. We will get to the second one which is yours. It is Barrie and what?

Mrs. Cunningham: Definitely Barrie. Everybody is used to going to Barrie.

Mr. Philip: I am willing to be flexible on the others but I think we need hearings in Barrie.

Mr. Reycraft: I disagree. It is what, 30 miles? How far is it from Barrie to Orillia?

Mr. Philip: Why would you want to go into a town the size of Orillia when 30 miles away those people will come to Barrie?

Mr. Reycraft: Because it is that much closer to Huntsville, Bracebridge, Gravenhurst, that area.

Mrs. Cunningham: What is? Orillia?

Mr. Reycraft: Yes.

Mr. Chairman: We are not going to get any place, obviously. Would you move the motion and let's deal with that.

Mr. Reycraft moves that the committee sit in Collingwood and Orillia.

You have heard the motion.

Mrs. Cunningham: Can I speak just briefly to it? You do not look too happy about that.

Mr. Chairman: The motion has been called, but we will be flexible.

Mrs. Cunningham: OK. I am just going to emphasize that people from Gravenhurst and Huntsville go to Barrie; they do not move in the other direction. That is the traffic flow, that is the route, Highway 400, that they travel. People go to Barrie. The roads are better, and it is easier for us to move in and about. People in most communities are used to going to Barrie; they will even do their shopping to come and see us.

Mr. Chairman: But you are coming the other way. You are coming from Huntsville down—would they not come down Highway 11?

Mrs. Cunningham: No. That is the route. Right down from Huntsville, Bracebridge and Gravenhurst to Barrie. To go across that way, you are taking totally different kinds of roads. People are used to coming into Barrie; they would come in for the hearings. They like to go to Barrie; that is where they do their special shopping.

Mr. Chairman: You have heard Mrs. Cunningham's discussion. I am now going to call the motion that was put by Mr. Reycraft.

Mr. Reycraft: Wait a minute. Who is not voting?

Mr. Pelissero: Christine is here.

Mr. Chairman: She cannot vote; she has been subbed for.

Mr. Pelissero: Who is subbing for her?

Mr. Chairman: You are.

Mr. Pelissero: I am subbing for Dianne.

Mr. Chairman: Mr. Pelissero, unless you have a seat we are not going to record your words for posterity.

Clerk of the Committee: Christine cannot vote.

Mr. Chairman: The motion has been moved. You have heard the motion by Mr. Reycraft; it is for Barrie—for Orillia and Collingwood.

Motion agreed to.

Mr. Philip: I would move that Barrie be added to the list.

Mr. Chairman: I think that actually would be—I guess you can move it.

Mr. Philip moves that we also go to Barrie.

Mrs. Cunningham: Could I make a suggestion here? When we were looking at group 3, Dianne Poole said, "Why don't we take a look and see where the interest is?" Is that possible in this particular area, which I think is so important? If we are going to be scheduling three spots to visit, given the time now that we are moving far to the northeast or northwest, can we not wait and see what it looks like?

Mr. Chairman: Are you content with that, Mr. Philip?

Mr. Philip: I would be content with that, but it does affect the advertising; that is the only thing.

Mr. Chairman: Would the balance of the committee be content with that?

Mr. Reycraft: Sorry?

Mr. Chairman: Mrs. Cunningham suggested that we wait and see what kind of response—

Mrs. Cunningham: Like we did for group 3.

Mr. Philip: If there is only one presentation in Orillia and 10 in Barrie, it would be pretty foolish for us to hold hearings in Orillia and bring all the people down from Barrie to Orillia.

Mrs. Cunningham: Why defeat Barrie right now? That is my point.

Mr. Chairman: I should add that from the clerk's standpoint it adds a great deal of complication. I will let her indicate what—

Clerk of the Committee: The difficulty again is that I have to set up places for you to meet. I cannot set up places for you to meet, in a lot of cases, on very short notice at this time of year. It is a bad time of year to get places to stay, not necessarily places to meet.

Mr. Ballinger: Let me just jump in here if I might. I think the process, the tradeoffs and the accommodations have been fairly reasonable. If there is a burning issue in Barrie, they will come to Orillia. Quite honestly, from another point of view, Orillia is very close to my riding; in fact, it is next door. None of these lists here includes areas which we call those fringe ridings.

I think the Orillia situation will encourage ridings like mine and Victoria-Haliburton to make presentations if they so wish. A place like Orillia often gets left out in the process; people bypass it for the larger centres. I think it speaks well that a place like Orillia has been chosen. I know that for those people who are interested in my riding that goes right up to the Simcoe border, it is easy access for them.

Mr. Chairman: All right. We have had significant discussion. Mr. Philip has moved a motion, which he is entitled to do. Do you wish to pursue the motion, Mr. Philip?

Mr. Philip: I think I am willing to accept Dianne's motion.

Mr. Chairman: I think the difficulty we have with that is what the clerk has said in terms of trying to schedule a—

1730

Mr. Philip: Except that Barrie is not the tourist area that Orillia and Collingwood are. It has a lot of Holiday Inn type of accommodation with meeting rooms. If we cannot find a place, that is—

Mr. Chairman: At the moment, we have a motion moved and passed for Orillia and Collingwood. If you are going to move that, I do not believe we have consensus, so you have got to move it.

Clerk of the Committee: He has moved it.

Mr. Chairman: You have moved it. You have moved Barrie.

Mr. Philip: I will withdraw my motion in favour of Dianne's motion.

Mr. Chairman: Well, Dianne is gone, and we have heard the difficulties. Either you put your motion for Barrie and we deal with it or we do not address the issue.

Mr. Philip moves that, in the event that there is considerable interest from groups or people wishing to present from Barrie, we will consider holding hearings in Barrie as well.

Mr. Ballinger: I am not going to support the motion. I say to you,

Ed, you can make that same argument for every other municipality we have chosen on the list. We have been sitting here for an hour and a half trying to decide which centres. I think we have clearly defined those centres, and I think it is unnecessary to use Barrie as an add-on, because the same people in the Niagara Peninsula and down in southwestern Ontario and northern Ontario can make the same argument.

Mr. Philip: Barrie is on the original list.

Mr. Chairman: The motion has been made by Mr. Philip. Is everyone clear on what the motion is?

Motion negatived..

Mr. Chairman: Those appear to be all the items we have.

Mr. Philip: Are Orillia and Collingwood put in then?

Clerk of the Committee: Collingwood and—

Mr. Chairman: They are in.

Mr. Philip: They are in group 1?

Mr. Chairman: Yes. OK. Thank you very much, committee members.

Interjections.

Clerk of the Committee: No. That was group 1. For group 1 consideration, it was determined Collingwood and Orillia—

Mr. Philip: Do you mean you are going to leave off Toronto?

Mr. Chairman: We have Toronto sittings for the second week and possibly that other week if we do not—

Mr. Philip: Does group 1 include Pickering, Oshawa, Scarborough and Mississauga?

Clerk of the Committee: Under the discussion of group 1, the only thing that was agreed to was Collingwood and Orillia.

Mr. Chairman: We seem to be losing our committee members. I wonder if committee members can come back and join us until we have had a motion for adjournment.

Mr. Philip: We have agreed to two weeks with group 1.

Clerk of the Committee: No. The determination was a week in each of these groups; for group 1, all that was agreed to was Collingwood and Orillia.

Mr. Philip: Then where does the committee wish to go in terms of Toronto and the other places in group 1?

Mr. Reyecraft: My suggestion is that we hold those hearings right here.

Mr. Ballinger: I support that.

Mr. Chairman: If you want to say something, sit down.

Mr. Ballinger: I am sitting in my chair, Mr. Chairman. I think quite honestly I am happy to support the areas across Ontario, which we have done very well. The areas adjacent to Metro will come to Metro; they come here every day for all kinds of things. I do not see any specific reason for holding one east of Metro.

We have covered the far-reaching areas of Ontario. We have now got central north, which will include all those ridings north of Metro, to go to either Collingwood or Orillia. Oshawa, Pickering, Ajax and any of those areas that feel compelled to make a presentation will just as easily do it in Toronto.

Mr. Chairman: Is there anyone else who wishes to address Mr. Reycraft's motion with reference to Toronto sittings?

Mr. Philip: Quite frankly, people in the suburbs and in some of the surrounding communities resent the fact that Toronto is always the centre whenever there are hearings. I think it might be good, since there have been debates in places like North York and Mississauga about this issue, to go out and meet in their council chambers and listen to what some of their councils have to say as well as to what some of their citizens have to say.

Mr. Chairman: OK. You are speaking against the motion. Any further speakers on Mr. Reycraft's motion? I am going to call the question, Mr. Ballinger.

Motion agreed to.

Mr. Chairman: I would entertain a motion for adjournment, if anyone so wishes to make it.

Mr. Philip: When are we going to have the schedule? By week's end?

Clerk of the Committee: No, you will not have it by week's end. I will try to get you a rough schedule early next week. I hope I will be able to get you some other kind of schedule by next Thursday at the latest.

Mr. Philip: OK. For clarification: On August 2 and 3, we have briefings from the ministry. What happens the rest of that week?

Mr. Chairman: That is a short week.

Clerk of the Committee: Tuesday is for travel, because Monday is a holiday.

Mr. Chairman: So it is Wednesday and Thursday we are sitting that week.

Mr. Philip: We sit only two days that week.

Mr. Chairman: That is right. The following week is set for the Toronto sittings.

Gentlemen, I hate to be sticky, but if we are going to get this on

Hansard, I want a motion, which I have from Mr. Ballinger, for adjournment and unless there is anything else. Mr. Reycraft?

Mr. Reycraft: There are a couple of other things we have not talked about. I assume we are using Hansard only when we are here at Queen's Park. Is that agreed?

Mr. Chairman: Any consensus on that? Hansard only here at Queen's Park? All right. Carried.

Mr. Reycraft: And given the places we are going to travel to, we are using translation services in Ottawa—

Clerk of the Committee: And Sudbury.

Mr. Reycraft: And Sudbury?

Mr. Chairman: Is that a consensus on that?

Clerk of the Committee: Do you want anyone else in Toronto?

Mr. Reycraft: I think we can leave that sort of thing to be decided later.

Mr. Chairman: It is available here in Toronto in any event.

Mr. Reycraft: If the need presents itself. This is going to be a pretty tight schedule, when we get out in these places. I would suggest that this committee adopt as procedure the fact that hearings start as scheduled, whether or not a quorum is present.

Mr. Chairman: Is that acceptable? That is reasonable.

Mr. Philip: That is the reason you are expected to be there.

Mr. Chairman: Unfortunately, we do not have Mrs. Cunningham here. However, it is agreed to by all who are present.

Mr. Philip: I have another procedural motion, which is this: During the travel and while we are in areas outside Metro, any member who talks about the topic when we are not in session and creates arguments on the bus has to buy drinks of their choice for every member of the committee.

Mr. Chairman: I will entertain a motion for adjournment at this point, thank you. You have moved a motion of adjournment, Mr. Ballinger. Those in favour of adjournment—

Mr. Ballinger: With the greatest respect—

Mr. Chairman: Thank you very much.

The committee adjourned at 5:37 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT

WEDNESDAY, AUGUST 3, 1988

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Marland, Margaret (Mississauga South PC) for Mr. Cureatz

Nicholas, Cindy (Scarborough Centre L) for Ms. Hart

Pelissero, Harry E. (Lincoln L) for Ms. Poole

Also taking part:

Cureatz, Sam L. (Durham East PC)

Reycraft, Douglas R. (Middlesex L)

Clerk: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Smith, Hon. E. Joan, Solicitor General (London South L)

Lal, Stien, Deputy Solicitor General

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, August 3, 1988

The committee met at 2:05 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: I recognize a quorum with members of all parties here. With the permission of Mr. Philip and the permission of the Conservative caucus, we will proceed even though all the members are not yet here.

Your agenda is before you, with a rather large, red-bound brie. We have with us the Solicitor General (Mrs. Smith), who I understand will have an opening statement, which will be followed by taking us through Bill 113.

Just for purposes of those people who are viewing this, this is a committee to look into and hear testimony with reference to a proposed bill of the government, Bill 113, An Act to amend the Retail Business Holidays Act. Perhaps the Solicitor General would like to proceed.

Hon. Mrs. Smith: Before I proceed with my statement, I would like to introduce to anybody here who has not met him, my deputy minister, Stien Lal. He came in in the midst of this bill presentation and has done an excellent job for me. I want publicly to thank him and all his staff for their able assistance to us at this time.

Mr. Chairman: May I just interrupt you for one further public announcement? This is a nonsmoking committee and therefore anyone who has the desire to smoke will have to leave the room to do so.

MINISTRY OF THE SOLICITOR GENERAL

Hon. Mrs. Smith: As every member of this committee knows, Sunday shopping has inspired heated debate in our province in the past few months. Organizations and individuals have come forward to applaud and to oppose the government's draft legislation. Some people have argued that the government is throwing Sunday shopping wide open in Ontario. Others say we are abdicating our responsibilities and imposing an enormous burden on unwilling municipalities or that we are threatening the quality of life in this province.

These people have been caught up in the misinformation that has clouded this issue. Through no fault of their own, they have been misled by some of the powerful myths that have surrounded the topic of Sunday shopping. What I propose to do right now is to dispel these myths and show the committee why our intended course of action is reasonable, fair and responsive to the needs of this province.

The first myth I wish to clarify is that the government is throwing Sunday shopping wide open in this province. This is simply not true. In fact, this proposed legislation provides a province-wide law that requires most retailers to close on Sundays. Furthermore, it makes this requirement stricter, fairer and more enforceable than the old law.

The exemptions under the current law, which allow businesses such as garden centres and pharmacies to open, have been cleaned up, but no new exceptions have been created. Under Bill 113, most retailers in Ontario will be required to close on Sundays and holidays under the provincial framework law.

The second myth I wish to address is the suggestion by some that the present Retail Business Holidays Act is working and should therefore be left alone. In fact, the present Retail Business Holidays Act is clearly not working. The present Retail Business Holidays Act is unenforceable and unfair. Retailers across this province have openly broken the intent of this law, and they have done this with increasing frequency over the past few years.

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Only last weekend, the Hy and Zel's department-drug store in my home town of London opened in contravention of the spirit of the law. I use the term "department-drug store" because Hy and Zel's does not just sell prescription drugs and sundries. It was never the intention of the present law to allow this large kind of store to open and sell everything from wieners and cheese to hardware and clothing.

There are abuses of the law all across the province. Whether it be Howie's in Stoney Creek or Sampson's, a clothing retailer in St. Jacobs, or Paul Magder's fur store in Toronto, many retailers in this province have taken advantage of a weak law that is riddled with loopholes. This kind of disregard for the law is unfair to other retailers who have stayed closed. It is unfair to communities which do not want Sunday shopping.

The proposed new law addresses these inequities. The proposed law is fair because it will eliminate these abuses. Fines in the current law are inadequate and account for much of the abuse, so we are increasing penalties significantly.

Further flouting of the intention of the law has resulted from the roping or partitioning off of floor space to fall within size restrictions. It is ridiculous that people must do their shopping in separate sections of one store because retailers have put up barriers to reduce floor space. We propose to eliminate this loophole by making roping off illegal.

We propose a law which is fair to all retailers, and we have provided new protection for retailers in malls and for franchise owners. Terms in the lease or other agreement can no longer require mall retailers or franchisees to open on Sunday if they choose to close.

The present Retail Business Holidays Act is unworkable and unfair. The police cannot be expected to enforce such an inadequate law, and respect for the law in general is threatened by this act. Precisely because it does not work, we have proposed changes to improve this inadequate law and make it fair to everyone.

The third myth I wish to address is the mistaken impression that the province is foisting a new and onerous responsibility on municipalities. Clearly, as the two maps behind me show—the one of southern Ontario and the other of the north—this is simply not true. Each and every dot on these maps represents an individual municipality that has made an independent decision to adapt the province-wide law to its own particular situation.

At least 100 municipalities all across Ontario have used the tourism exemption in the present law to allow at least some retailers to open on Sundays. It is interesting to note that many of these communities have had opening bylaws in place for more than 10 years. I emphasize the point that these 100 municipalities have acted legally within the present Retail Business Holidays Act.

In some cases, these bylaws are not an expression of a municipality's desire to promote tourism, but instead represent the simple wish to regulate retail store hours on Sundays and holidays for themselves.

We are not putting a new and difficult burden on municipalities. What we are doing, in fact, is improving a provision in the old law which already allows for the expression of local needs and preferences.

The old law said that municipalities could pass bylaws only for the promotion of the tourism industry. We are now moving to recognize that there are other legitimate reasons for a community to adapt the province-wide law to meet its own needs. In Thunder Bay, for example, council has used the tourism exemption for the past three years to allow retailers to open on the third Sunday of November each year so that handicapped customers can have their own day for shopping.

In Metro Toronto, Chinatown West has been open on Sunday for several years. Anyone who visits that area will notice that most of the shoppers are local people, not tourists. This exemption was not passed for tourism reasons but for cultural reasons. Chinatown West was allowed to open as a reflection of the local Asian community which considers Sunday a commercial day.

I would like to point out that we want to recognize varying religious as well as cultural needs with our new law. In order to achieve this goal, we propose an amendment to allow retail businesses to open on Sunday if they close throughout another day of the week because of the owner's religion.

Helping the handicapped in Thunder Bay and responding to multiculturalism in Toronto are just two examples of how individual communities have reflected their own needs and attitudes under the present law.

Obviously, it is unfair to pretend that tourism is the only legitimate reason for a local option in the Retail Business Holidays Act. With amendments to broaden the tourism exemption and allow for religious diversity, we will provide fairness and full equality under the law, rather than the unfairness and partial equality provided by the present Retail Business Holidays Act.

In expressing a need for an improved local option, I emphasize that municipalities are under no new pressure to pass their own bylaws if they are satisfied with the existing provincial framework. I would like to use the example of Kingsville, a town located in Essex county, to support my argument.

Recently, I received a letter from the town clerk advising me that 78 per cent of Kingsville merchants were opposed to Sunday shopping and would prefer that the status quo be maintained. It must be stressed that Kingsville town council need not lift a finger to preserve the status quo if our proposed legislation is passed. In spite of impressions to the contrary, Bill 113 contains a provincial framework for Sunday closings that is actually stricter, more fair and more enforceable than the framework presented in the present law.

If the people of Kingsville like the present situation in their community, then they need not pass any bylaws to preserve it and they can rest assured that the abuses that have plagued some communities because of the old law will no longer threaten the status quo.

What this new bill does allow is the freedom for municipalities to adapt the law to their own situation if the provincial framework does not meet their needs. As a result, a community such as Sault Ste. Marie may allow retailers to open in order to compete with its American counterpart; or, if they wish, communities may tighten restrictions and close down retailers, such as garden centres, convenience stores and laundromats, which are allowed to open up under both the present and the proposed legislation.

Some communities may well want to pass more restrictive bylaws. In fact, this kind of further restriction has been discussed by members of London's city council.

We are not imposing a new and heavy responsibility on municipalities. Rather, we are giving them a chance to tailor Sunday shopping legislation to their own particular needs while at the same time providing them with a law that requires no action on their part if they are satisfied with the provincial framework.

The fourth myth I wish to tackle is the misconception that the so-called domino effect will immediately grip the province if the legislation is passed. To prove the fallacy of this argument, I point out the example of Goderich on the shore of Lake Huron and the communities which surround it. On June 27 this year, Goderich town council decided to designate the town as a tourist area under the present act and allow retailers to open on Sundays from July to September.

Leaders of surrounding communities did not see this as a threat. The mayor of Clinton, John Balfour, said that there is not the same need to open on Sundays in rural Ontario as in lakefront towns like Goderich and suggested it would not affect his town. Wingham Mayor Jack Kopas told the London Free Press: "Our summer population is not affected as much as Goderich is by vacationers. I don't see inland communities having that much of an increased clientele."

All across Ontario we can find examples where some communities have allowed Sunday shopping for years, but other surrounding communities have remained closed.

In recognition that the situation is different in metropolitan areas, where communities are closer together, we are maintaining the authority that is in the present act, that regional governments now have under the present Retail Business Holidays Act to determine exceptions.

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Finally, I would like to put an end to the myth that in proposing these amendments to the legislation, the government is undermining the quality of life in the province. Rather, I would argue that we are proposing a fair and reasonable law which protects a very special and diverse quality of life. The proposed law is fair because it eliminates abuses in the current legislation. In this way, we will protect respect for the law in general, and respect for the law is central to our way of life in this province. The proposed law is

fair because it removes loopholes and increases penalties. In this way, we will ensure that Sunday shopping is not forced upon communities which do not want it because some retailers intentionally flout the law.

The proposed law is fair because it gives municipalities the freedom to adapt this law to their own unique needs and preferences. In this way, we will ensure that the individual way of life of the many diverse communities in this province can be preserved. We are all aware that the needs and preferences in communities such as Niagara-on-the-Lake, Kenora or Kingston are as varied as the needs and preferences in Windsor, Sault Ste. Marie or Woodstock.

The proposed law is fair because it provides flexibility to communities so that they can promote and preserve their own quality of life by further restricting Sunday openings, by allowing some or all retailers to open or by choosing to allow regulation under the improved provincial framework. Many communities now have bylaws in place which allow retailers to open on Sundays and holidays. Some of these bylaws have been in place for more than 10 years. It is ridiculous to imply that family life is less important in these communities than it is in the communities without these bylaws.

Having dealt with the myths, I would like to briefly expand on a fact that cannot be ignored in this debate. It is a fact that tourism is extremely important to Ontario's economy, and it is the responsibility of the government to support and encourage it. Tourism is the second largest industry in Ontario, worth more than \$9 billion each year. Close to half a million Ontarians count on tourism for their livelihood. Tourism generates jobs in the north and east, where they are most needed.

Shopping is one of our main tourist activities. In Ontario, shopping ranks second only to transportation in tourism spending and third among attractions specified by tourists in selecting destinations. Therefore, we have acted to provide for this needed flexibility by proposing these amendments to the Retail Business Holidays Act.

The various myths surrounding Sunday shopping have done a great deal of harm to a proper understanding of this legislation. I believe that in your hearings across the province, Mr. Chairman, you and your committee will be confronted with arguments based on these myths. I hope the comments I have made thus far will help the members to address these misconceptions and promote a proper and reasonable evaluation of the proposed legislation because I believe this legislation is fair, reasonable and consistent with Ontario's way of life.

Mr. Chairman: I already have two individuals who have asked to ask questions on the statement, but if I may, with the committee's consensus, I will have the minister proceed to the next aspect, which is a walkthrough of the act, and then allow questions to be asked. Is that agreed?

Mr. Philip: I think she should be questioned on her statement.

Mrs. Marland: How long does the walkthrough of the act take?

Hon. Mrs. Smith: I have not timed it. I have made a lot of notes. I do not think too long. I propose to go ahead. If at some point you want to question that it is going too long, we could look at it then.

The problem, I suggest, is that it is a fairly complicated law. We have tried to put it together in a way to make it more understandable. If we go through it clause by clause, I think the questions may be more relevant because some of them may become either more pointed or unnecessary once the law is examined. For those who object to the law, they will have a better understanding of what it actually says.

Mr. Chairman: Are you content with that, Mr. Philip, that we proceed?

Mr. Philip: No. With respect, the minister has made a number of statements that there are a number of myths out there. I think a great part of her statement is blatantly false and untruthful and I think members of the opposition, members of this committee, have a right to question her on that. Her statement is quite contrary to statements she has made elsewhere, and I think we have a right to deal with the so-called myths which she is alleging, and deal with them now. In terms of clause-by-clause, I suggest we will have some very specific questions on the individual items, and that may go on for some time, and I think we should deal with that afterwards. The minister has made an opening statement. I think members of the committee at least have a right to respond to that opening statement.

Mr. Chairman: Are there any other members who agree with Mr. Philip? I thought we had a consensus that we would proceed with the walk through the act and then take questions at that time. Are there any other members who agree with Mr. Philip?

Mrs. Marland: My concern is the time factor; if it means that at the end of the afternoon we have less time. How long is the minister going to be here and how long is the committee going to sit?

Mr. Chairman: We will sit as long as is necessary to allow questions to be fully placed by members of the committee.

Hon. Mrs. Smith: I am not leaving.

Mrs. Marland: So that is up until six?

Mr. Chairman: We can sit beyond that if necessary. It just seems that it gives a completeness to it. Mr. Philip has expressed his concerns. Do any other members of the committee feel of like mind?

Mrs. Marland: I do agree with some of Mr. Philip's comments, because I can see that what may happen is that this walkthrough may indeed generate questions. I can see the point that some of the walkthrough will address some of the questions that may have been raised. However, I agree there is a great deal in the minister's opening statement that does bear questioning.

Hon. Mrs. Smith: If the size of the book is formidable, I point out that the section I propose to look at is just section 8, not the whole book.

Mr. Chairman: On which there will be an opportunity.

Mr. Hampton: Had the opening statement merely been sort of a summary of what the minister wanted to have dealt with today or what she proposed to take us through in a walkthrough, I would say, fine, let's go on the walkthrough of the act. In fact, the opening statement is not just sort of a summary of what we are going to walk through. If I may, it is a very polemical statement. In one place, it brands certain legitimate concerns in our society

as ridiculous. It describes anyone who has a contrary view, or who has voiced objections about this legislation, as dealing in myths.

This statement deals with much more than just the technicalities of the legislation. To not be allowed to ask questions on this statement is ridiculous, because this statement is clearly much more than just a walkthrough of the act.

Hon. Mrs. Smith: No, the walkthrough is coming.

Mr. Hampton: That is what I am saying. We are dealing with two different things here and I think we should have the opportunity to ask questions on this, because this makes some very outlandish remarks about some legitimate institutions and interests in our society.

Mrs. Cunningham: If members have questions about the remarks, they should be asking their questions now. This is an agenda item, the walkthrough is another agenda item. I think we should be dealing with them as they arise, and this has arisen now. As far as I am concerned, the tone of my voice right now will remain the same because I am absolutely in shock at this statement. It is not what I expected. To me, it is a political statement and I think it deserves some political questions. It is as simple as that. It has nothing to do with the walkthrough that we are coming up to.

Mr. Chairman: I thought I had a consensus. I thought only Mr. Philip was in favour of doing that, but it seems as though it is changing.

Mr. Kanter: You have asked for people who agree with Mr. Philip. I want to make it very clear I do not agree with Mr. Philip, but I think the other side should also be heard.

Mrs. Marland: That is a big surprise.

Mr. Kanter: I would like to have an opportunity to speak very briefly. Mrs. Cunningham referred to the agenda. The agenda before us is a review of Bill 113, and we are not here to consider in a very—

Mrs. Cunningham: Then why did I have to listen to this?

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Mr. Kanter: I listened as well, and it seems very clear that the opening statement refers to specific clauses in the legislation. The opening statement refers to the bill, and indeed, it is only comprehensible in companionship with the bill.

I have not been a member of this Legislature for very long; with respect, a little longer than Mrs. Cunningham. I came in September, at the same time as Mr. Hampton. When the same committee was considering the auto insurance bill, it heard a brief statement by the minister, Mr. Nixon, with respect to that legislation, and he included as an integral part of his opening statement a walk through the legislative provisions of that bill.

I would suggest that is the precedent which has been established by this committee. I would submit it is the usual and proper course that ought to be followed by this committee today.

Mr. Chairman: Each committee is entitled to decide in its own way.

It is not necessarily bound by what went on in the past. Are there any further comments on it?

I am wondering whether, as a compromise, just so we do not have to start off these proceedings with a vote—because that is what it sounds like we are coming to—perhaps we could agree on a time frame within which those questions might be asked. The reason for that would be so that we can deal with both of these matters the Solicitor General wishes to put forward before the end of today's sitting. Is that acceptable to the members of the committee?

Mr. Philip: Since the minister has had 30 minutes, how about allowing each of the opposition parties and the Liberals 30 minutes to ask questions on the statement?

Mr. Chairman: We started at about 2:05 p.m., so that was about 20 minutes. Would you be agreeable that there be 20 minutes for each caucus in terms of questioning of the minister and then we can get on with the walkthrough? Is that agreeable to the members of the committee? Is there consensus in that regard?

That is particularly significant to Mr. Cureatz. He is on the select committee on energy, and with the permission of his colleagues, I think he wants to lead off in terms of using some or all of that 20-minute portion.

Mr. Cureatz: Some.

Mr. Chairman: I assume I have all the other members' agreement to Mr. Cureatz starting off?

Mr. Cureatz: I will be brief, as I am sitting on the energy committee. However, we will have the opportunity of seeing all of you when we are on tour. I know it will be as invigorating as the opening remarks were this afternoon.

Might I begin by saying that I guess a good defence is a strong offence. I am sympathetic with Mr. Philip's comments that we should be asking some questions on your statement, because I feel you were approaching it in terms of a general philosophy outlook, whereas if we proceed to the clause issue, we are looking more at the specifics. I am glad you, Mr. Chairman, have come up with this kind of compromise.

I will refrain from a long diatribe. I will, however, say to the minister, as much as I do highly respect her and congratulate her for being the first woman minister in the Solicitor General's office, which I had the opportunity of serving for some time, that it is the approach I am having difficulty with in regard to this legislation.

As critic of your ministry, I can only begin by saying I have volumes of correspondence from people across the province, prior to my major address in the assembly and after, about their concerns with regard to the proposed legislation.

Let me get a little more specific and then I will let other committee members carry on. I want to bring to your attention an interesting report which made three major recommendations. I will review those with you.

"1. The primary responsibility for the administration of the Retail Business Holidays Act, or other legislation relating to retailing on holidays, should remain that of the provincial government.

"2. In exercising its administrative responsibilities, the Ontario government should formulate the general framework and policy standards for the operation of the Retail Business Holidays Act.

"3. The municipal level of government should retain the right under the Retail Business Holidays Act to exercise specified delegated authority, for example, decisions on the designation of local tourist areas."

The strange thing is that those recommendations were made by the select committee on retail store hours back in May 1987. That was a committee report made by all parties, of course—granted in the time of minority government days.

I could almost be forgiving under the present situation, in which your particular party received such a large mandate from Ontario, with your approaching us with this legislation and saying, "Now we have a majority government, the people have spoken and I am coming forward now with a change."

But the thing that shocks me to no end, which I am really surprised about and having some difficulty with—and this is the centering in on my question—is that Terry O'Connor, a former colleague of mine, was the chairman of the committee and among other members of the committee was none other than Joan E. Smith, who I presume was yourself. If it was not, maybe you should speak up.

Hon. Mrs. Smith: It was not Joan E.

Mr. Cureatz: So the question is, besides the election, what happened with your no doubt very concentrated, in-depth re-evaluation of your position as a private member on the select committee, endorsing the three recommendations of substance that I read, and now you have brought forward this legislation which flies in the face of the recommendations of the former select committee of which you were a member?

Interjection.

Mr. Cureatz: That is right. We are having some difficulties with your about-face on the issue. I wonder if you might be so kind as to relate to the committee what transpired, besides the election, from May until now to bring forward legislation that is something totally different from what was recommended by that select committee.

Hon. Mrs. Smith: I do not know if you have the same numbering because you do not seem to have the bound committee report that I have. But on page 21, I would remind you, under "Tourist Industry/Area Municipal Exemption," the first paragraph reads:

"In reviewing this issue the committee firstly believes that due to the diversity of local conditions and requirements across Ontario, local municipalities should continue to exercise the authority to designate local tourist area exemptions. These decisions, as discussed previously, should be open to appeal."

If you go down further, it then goes on to say that they believe the Ontario government should first form a definition of "tourism" that is broad, to which municipalities can then apply their own local definition. They never anticipated it not being a local decision suiting local circumstances. They just said that first the province should come up with a broad definition of

"tourism" that would be used, in a sense, to prevent abuse by "tourist" definitions in communities going too broadly.

In fact, upon close examination of this by ministry lawyers, particularly in the Ministry of Tourism and Recreation, trying to determine how one defines "tourism" in Ontario in a way that applies to all the things that have been declared tourist exemptions—and we talk about 130 of them—some of those, it could legitimately be said, should not be there, so let's forget about them if you are talking tourism.

I think the variety and use the municipalities have made of the present law gives us a guideline. We would have to say, "What is tourism in Ontario?" We have simply been advised legally that we cannot come up with such a definition that is tight enough to be of any meaning in the court and that in effect would serve a province with as many diverse types of neighbourhoods as we have in Ontario.

We have not said that any municipality cannot do exactly as called for here and declare only tourist areas to be open in the municipality. If they can find a definition of "tourism" that does happen to suit their municipality, then they are quite permitted within this new law, as I will be demonstrating, to do that, because this is one of the things the new law allows for.

We could not do it on a provincial basis, and having recognized that, we have drawn together a law that allows the municipalities to still do it if they wish, but do it in a way that we believe could then hold up in the court.

Mr. Philip: If the provincial government cannot come up with criteria as to which stores should be allowed to remain open, which is essentially what you are saying, what makes you think the municipalities can come up with definitions or criteria? They are not contained in your bill. What makes you think that a municipality can come up with any better criteria as to why certain stores should remain open when the province cannot?

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Hon. Mrs. Smith: In so far as it would be a local municipality that would have to examine that, it would have to decide that for itself. Some municipalities may indeed have specific types of tourism that they could easily define. I have been told, for instance, by people around Kitchener that the Mennonite communities run certain areas and these have been defined as tourism. I think I am right in that. I see the member for Kitchener (Mr. D. R. Cooke) here. Is that correct?

Mr. Chairman: He is nodding his head, yes.

Hon. Mrs. Smith: I think the ones they have recognized are Mennonite, separate communities that live somewhat separately, and I gather that Kitchener did not object to their having a tourist definition back when it was first done. So I believe in Kitchener they could classify these as a class of business and say, "As a tourist attraction, we are allowing them to be open."

Every municipality would have to look at its own situation, because it would be its bylaw.

Mr. Philip: You are saying your act is a leap of faith that the

local municipalities will somehow be a little bit smarter than you are in coming up with criteria and definitions as to who should remain open and who should stay closed.

Hon. Mrs. Smith: I am saying it is a facing of reality.

Mr. Chairman: Mr. Cureatz, you have exercised approximately 10 minutes and, being the gentleman you are, I know you would not want to deprive your two excellent caucus colleagues of an opportunity to ask questions. Do you have any further questions?

Mr. Cureatz: As a matter of fact, I do, but with your remarks about my two fine colleagues, I think I will restrain myself to allow them the opportunity of further questions.

Mr. Chairman: I will let you get back to the select committee on energy.

Mr. Cureatz: Thank you. I will need energy to come back to this committee in two weeks.

Mr. Chairman: I have a small supplementary from Mr. Pelissero.

Mrs. Marland: I have a question on procedure. If you are going to time per caucus, then I do not think we can have supplementaries from the other members.

Mr. Chairman: I am keeping track of their time as well.

Mrs. Marland: All right, thank you.

Mr. Chairman: It will be difficult, but it will work out.

Mrs. Marland: It won't, but congratulations.

Hon. Mrs. Smith: We will buy him a little timer.

Mr. Pelissero: Could the Solicitor General tell us what involvement the province currently has in a municipality's determining which areas are to be tourist designated?

Hon. Mrs. Smith: The province has never had any role in that at all. It is strictly a local option to declare something tourist, for whatever reasons they please. They have no road by which they come to us for approval.

Mr. Pelissero: Will that be changed under the proposed legislation?

Hon. Mrs. Smith: No, it will not be changed.

Mr. Philip: With regard to your suggestion of myth 2—namely, that the suggestion is made by some that the present Retail Business Holidays Act is working and should be left alone—can you tell us who suggested that?

Hon. Mrs. Smith: I have had all kinds of media people suggest it to me and I have had individual people ask me. I believe if you closely examined some of the remarks in the House, you would find it in there too, but I am not sure about that. Certainly, I have run into it.

Mr. Philip: Would you agree that the select committee on which you sat and which in fact recommended that the primary responsibility for the administration of the Retail Business Holidays Act should be retained by the province did not take the position that you are stating as a myth that is somehow out there, but rather took the position that the act was flawed and there were a number of things that needed to be changed? Indeed, that select committee made a number of proposals that were not followed by this government, even though you have signed them and even though the Premier (Mr. Peterson), in fact, endorsed them during the election.

Hon. Mrs. Smith: By and large, I think almost all the important proposals made by the select committee are incorporated into the new bill. Although I do not intend to go through the select committee report today clause by clause, I think if you go through it, you will find most of them are incorporated or are among the things that you should be discussing with the possibility of looking at them. The only things I am saying cannot be incorporated are what we have found to be legally impossible to do, which are the provisions for a province-wide definition of "tourism."

Mr. Philip: You give a couple of examples of how it is not working to build up your myth by those people out there, whom you fail to identify, who are apparently claiming that the present act is OK. Would you agree that the examples which you give are in fact dealt with in the select committee's report that you signed and that there are ways of dealing with the very examples you use and red-flag as examples of why the present act is not working?

Hon. Mrs. Smith: Well, some of the examples in the report have been incorporated and indeed would have improved the present bill as it now stands. These were incorporated. But to leave the myth alive that tourism is what is being used as the only thing that is allowing Sunday shopping is to promote a myth. To come forward with a new bill at this time in history saying that all of these 100-and-something dots represent exemptions that were made by some explainable tourist definition that can be applied to this whole province is to live a myth, because we have examined them; we do not believe you can do that. They represent many diverse locations and municipalities making diverse decisions about themselves.

Mr. Philip: It is interesting that the two municipalities you mention are quite different from the municipalities I might like to look at, such as what happens if Vaughan opens up?

Hon. Mrs. Smith: They are all different. I think Ontario is all different.

Mr. Philip: What studies did you commission or did you have done between the time in which you signed a report with a series of recommendations which are contrary to your bill, between the time in which you said that the municipal option would in fact lead to wide-open Sundays and force many workers, particularly single moms, to work; what research have you and your ministry done between that time, or indeed between the time in which you called the municipal option "the chicken option"; what research have you done that would lead us or persuade us you are right in this bill; and can you table that research?

Hon. Mrs. Smith: The thing that has happened in the meantime is my being convinced by legal people that in fact such a tourism definition cannot be brought forward, and that was what this whole report was based on. It was

based on the province producing a tourism definition that would apply across the province.

Research was done, as you can see, to find out as closely as we could what use has been made of the tourist exemption by municipalities. When I say, in answer to the question, "What does the province have to do with that?" we literally have nothing to do with it, we did not have on record what had been done by local municipalities when we met last time for the subcommittee report or when we started studying the matter for this bill. We did do that research, and you see in front of you the results of some of it.

Mr. Philip: Is it not true that none of the research was available at the time you tabled the bill?

Hon. Mrs. Smith: Some of the individual circumstances were available. They were the kinds of things we discussed with the lawyers.

Mr. Philip: Is it not true that any research that you may be able to give us is in fact research enabling you to rationalize a bill, an option, which, a week before, you called "the chicken option?" What research did you get in that week, between the time you said it was the chicken option to go the municipal route and the time you tabled your legislation, that would suggest that you should have a complete about-face, a complete change, and in fact get legislation ready that would be tabled before the Legislature that would go exactly contrary to the chicken option which you were so strongly opposed to?

Hon. Mrs. Smith: There is nothing contrary in this bill. There is a tightening up of most laws and a recognition of the fact that tourism cannot be defined on a province-wide basis, but this bill is very, very close to the last bill except it improves it. The fact of your once again presenting the notion that this is a complete change and radical change is promoting the myth that this bill is suggesting wide-open Sundays, which it is not. It puts forward the same provincial framework that was there before, and it is not a wide-open Sunday response, although we heard that, almost—speaking of where myths come from—in our days and days of listening to petitions and our days and days of listening to speeches. The term "wide-open Sunday" was repeatedly used across the floor and the myth was created, so if you want to know where myths are created, almost every petition that was handed out used the term "wide-open Sunday."

Mr. Philip: I am sure the people in Vancouver North who had to open, despite what their council wanted, probably learned the definition of "wide-open Sundays" then.

Hon. Mrs. Smith: I thought Vancouver had a referendum.

Mr. Philip: Since you say that this is a tightening up rather than a loosening up, I refer you to page 8 in which you talk about—

Hon. Mrs. Smith: Page 8 of what?

Mr. Philip: Page 8 of your statement.

Hon. Mrs. Smith: My statement, OK.

Mr. Chairman: Could I just interrupt for a second? Are you going to share the time equally with Mr. Hampton? You have 10 minutes.

Mr. Philip: I will ask one last question. You state: "I would like to point out that we want to recognize varying religious as well as cultural needs with our new law. In order to achieve this...we propose an amendment to allow retail businesses to open on Sunday if they close throughout another day...because of the owner's religion." I suspect what you mean is regardless of size.

Hon. Mrs. Smith: That will come out when you are going through the bill.

Mr. Philip: Yes. Do you recall how vehemently one of the members of the select committee argued when the Seventh Day Adventists appeared before the select committee? In fact, that member argued that it would create a checkerboard of stores open across the province, because large retailers could simply designate by religion every second store.

Hon. Mrs. Smith: We have provided in this that it cannot be done. We were referring at that time in the committee to the fact that, for instance, Loblaws could declare some open and others closed and this sort of thing. That is prevented in this bill.

Mr. Philip: Is it prevented then in terms of franchising? I cannot franchise and appoint a new manager for each store.

Hon. Mrs. Smith: That is right.

Mr. Philip: Is it prevented then in terms that I cannot open up a company in a different name or under a numbered company in my wife's name?

Hon. Mrs. Smith: That is right. If you want to give your wife some money and declare it hers and not have anything to do with it, maybe you could. We do not have anything in about that within a family.

Mr. Philip: So you could in fact do the checkerboarding that you were so concerned about.

Hon. Mrs. Smith: If you are so generous and your wife wishes to go on record as belonging to a different religion than you, and you want to deceive the public by such a public declaration, then that could be done. We trust at least that the public has some concept of fairness and will not deliberately try to use one family member to be one religion. In that case, you would have to be totally separate individuals.

Mr. Philip: You were not that trusting in the select committee, in which you suggested that very thing could be done.

Hon. Mrs. Smith: I think when we get to walking through the bill would be a more appropriate time to discuss this particular clause, because I think we will get to that.

Mr. Chairman: You are also cutting into Mr. Hampton's time. I am going to ask if there is anyone from the Conservative or Liberal caucus who wants to ask a question. I do not see any hands.

Mrs. Marland: I think you had my name down.

Mr. Chairman: I am sorry. I did not realize that.

Mrs. Marland: I must say at the outset that I find this statement insulting at best. I hope the Solicitor General is not the author of the statement. If she is, then we have a great deal more to be concerned about with the Liberal government of this province in this day, because I feel that for a minister to suggest that people's opinions are myths is a very regressive day in the government of Ontario.

It is really unfortunate that it could not have been worded in such a way that there were these other respected opinions, "however"; instead of which we have the statement that everything everybody else has said in their opinions, in their thousands upon thousands of petitions that have been presented in our Legislature, is received and interpreted as propagating myths. In my questions now to the minister, I would really like to know how it is that a government can be so almighty that somebody of a different opinion is stating a myth and not a fact.

When we are dealing with something that is going to impact the entire province, with this bill, we can perhaps compare it with the Highway Traffic Act. Certainly the Highway Traffic Act does not address individual communities and individual needs. It might well, but it does not. The reason for that is that it is a provincial jurisdiction, as this should well be. On page 3—

Mr. Chairman: This is of which report?

Mrs. Marland: I am dealing only with the minister's statement. The minister says, "The present Retail Business Holidays Act is unenforceable and unfair." She goes on to explain, I think in her way, what she thinks is unfair, and that deals primarily with the tourist provision. I would like to know why the statement is made that it is unenforceable. I should say that I did sit on the Progressive Conservative task force that toured this province in 1986. At that time, I probably expected that the people of Ontario would want Sunday shopping across the province, and certainly we learned that it was the opposite.

Mr. Chairman: Would you like the Solicitor General to answer that question?

Mrs. Marland: What is it that is unenforceable? What makes the present act unenforceable?

Hon. Mrs. Smith: Once again, in going through the act, I will be able to point out some of these things. One of the obvious things that makes it unenforceable is the light fines. I could give you an example of a place in Barrie that had 33 fines piled up, went to court and paid them off at a cost of \$30,000. It now has 25 more piled up and just continues doing business, with these fines as a cost of business. That is only one example. I think as we go through the act, you will find there are many things that make it unenforceable and therefore unfair, because it is particularly these big organizations that can flout the law and get away with these sorts of unenforceable techniques.

Mrs. Marland: I think we all knew that answer. Those of us who had read either of the previous reports on this subject all agreed that the fines are too light in the present law, but that does not argue for throwing it out.

Hon. Mrs. Smith: With respect, we did not throw out the law. We have amended the law.

Mrs. Marland: I asked why it was unenforceable. The answer was the light fines.

Hon. Mrs. Smith: I gave an example. An example is the light fines.

Mrs. Marland: The grade 3 student in any elementary school in the province, I think, would know what you do to remedy light fines.

Mr. Chairman: As we all know, Hansard can record only one voice at one time. If two people are speaking at one time, they are going to have an Excedrin headache. Also, the record is going to look pretty funny. Maybe we can keep that in mind when we are asking questions and answering them.

Mrs. Marland: The answer to my question was the light fines, and therefore it became unfair. I think it is really regressive when you remedy something by deciding that you have to throw it out in order to deal with the issue. There is no question by the people who were involved with this matter in detail in the last three years in the Legislature that the fines were too light, and that was one of the reasons it was unenforceable. The remedy for that was very clearly outlined in the all-party report.

You also talk about all the abuses all across the province.

Mr. Chairman: Which page is this?

Mrs. Marland: Page 4, where you happen to give some free publicity to the abusers, which certainly would not have been my choice. I never refer to the furrier in Toronto as anything but "the furrier in Toronto." Here we have free advertisements for three firms. I would like to know if the ministry has on record the number of retailers there are in Ontario today.

Hon. Mrs. Smith: I do not know. I would think that would be held by municipalities, because they give out the licences. Would that not be correct? I believe that.

Mrs. Marland: All right. So you are saying that the ministry has presented a new bill to the Legislature that affects every retailer in the province, and it does not know how many there are.

Hon. Mrs. Smith: Are you suggesting that at one time it did know how many there were?

Mrs. Marland: No, I am not suggesting that at all. I am simply asking the question.

Hon. Mrs. Smith: This is a municipal responsibility, and as far as I know, it does not have to report to us when a business starts in business or folds.

Mrs. Marland: All right. I would have thought that when you were passing legislation, you would have been interested in how many people it impacted, purely in the commercial-retail sense. The reason I would like to know how many retailers there are in the province—and I am sure if the records rest with the municipality, the ministry could very easily have extracted those records so that at least it would have known how many people we were dealing with—is that you state that there were a number of abuses all over the province. You say, "Many retailers in this province have taken advantage of a weak law," and you state these three examples.

My question is that if you do not know how many retailers there are, you probably do not know what percentage have taken advantage of "the weak law." If you are going to penalize everybody in Ontario, not only the retailers but those people who choose to preserve Sunday as a common day of rest or a common day of pause, then I think you have to know what kind of figures and facts you are dealing with. If you do not know how many retailers there are, then when you say many retailers in this province have taken advantage, you probably do not know how many have taken advantage either.

1500

Hon. Mrs. Smith: The statistics of who would be taking advantage would not include those who have not been charged and we see them all over the place and around and about. I would see one unnamed, therefore, unadvertised, down the corner from my apartment that has big "Open on Sunday" signs in it.

Mrs. Marland: Does your ministry have a record of the number which have been charged?

Hon. Mrs. Smith: Yes, I am sure we could get that. I do not have it here.

Mrs. Marland: But you are making the statement—

Hon. Mrs. Smith: I do not know if you are questioning what I am saying and what the select committee said and what the Conservative report said, that these abuses exist. I think they all agreed with my statement. I let my statement stand. If you do not agree with it, that is your privilege.

Mr. Chairman: I hasten to protect your colleague's time as well.

Mrs. Marland: All right. I will yield to Mrs. Cunningham.

Mr. Chairman: I am just going to check so I can be totally—

Mrs. Marland: I started at 2:53 p.m., Mr. Chairman. My colleague does have some time.

Mr. Chairman: You have used up 14 minutes. We get back to Mrs. Cunningham—in fact, we are at you now because I do not see any hands up in the Liberal caucus. I am sorry, Mr. Hampton; I beg your pardon. You are first. You have eight minutes, Mr. Hampton.

Mr. Hampton: The first question I want to ask is this: Is it essentially your position, Minister, that under the old legislation there existed a local option and what the government is doing is simply improving on the local option?

Hon. Mrs. Smith: We are recognizing that they had a local option under the tourist exemption. It is even stated to some extent in all these reports: the tourist exemption, clause 4, "If, for reasons of promoting...." or whatever.

Mr. Hampton: So essentially you are improving on the local option, yet there is no fundamental change in the direction of the legislation. There is no fundamental change in the issues it is trying to address.

Hon. Mrs. Smith: We have left the provincial framework very much

intact, although you may want to discuss it as a committee.

Mr. Hampton: OK. I am struck by one of the comments you make in your address. It is page 10. You say, "As a result, a community like Sault Ste. Marie may allow retailers to open in order to compete with its American counterpart."

Hon. Mrs. Smith: I believe that was the reason they gave.

Mr. Hampton: Are you saying, then, that economic competition played a part in Sault Ste. Marie, Ontario?

Hon. Mrs. Smith: Sault Ste. Marie did not report to us on what its real reasons were, but under the tourist exemption they voted to try one year open and then to re-examine it.

Mr. Hampton: But, as I see in your statement here, you certainly seem to have accepted it, because you say, "A community like Sault Ste. Marie may allow retailers to open in order to compete with its American counterpart."

Hon. Mrs. Smith: I believe that was what they said. That was their reason.

Mr. Hampton: OK, so economic competition is something in play here.

Hon. Mrs. Smith: We are saying we cannot challenge them under this law. They opened under the tourist exemption. That was their right under the tourist exemption. We could, if we thought it were provable in court, take them to court and say: "You're not attracting tourists. You're attracting your own people." We are saying you cannot do that.

Mr. Hampton: I am not interested in the long story. I am simply asking you if economic competition plays a part here. Your statement seems to indicate so.

Hon. Mrs. Smith: It was their decision. I do not want to put words in their mouths, but I believe they did say that was their reason, and I think it is probably the reason in several communities.

Mr. Hampton: OK. On page 11, you say, "The fourth myth I want to tackle, Mr. Chairman, is the misconception that the so-called 'domino' effect will immediately grip the province," that there is a myth about the domino effect. OK?

Hon. Mrs. Smith: Yes.

Mr. Hampton: What I see as the domino effect or the way I have heard the domino effect explained is that if one municipality gets into Sunday shopping, that creates a very powerful competitive tool to be used against neighbouring municipalities. That is how I heard the domino effect explained in a radio interview.

Hon. Mrs. Smith: You will also understand the statement I made in these opening remarks that we recognize that where two municipalities are almost in direct touch, serving the same public you might say, there is more likely to be that sort of effect. Therefore, we have recognized the regional or metropolitan government as the government to control it. In fact, in Sault

Ste. Marie there are two communities immediately adjacent serving a broad area. I think it illustrates how many situations there are.

Mr. Hampton: How can you call the domino effect a myth when you acknowledge that was at work in Sault Ste. Marie, Ontario?

Hon. Mrs. Smith: They are directly adjacent. Some places that are directly adjacent may still have the effect on each other, but maybe they value their Sunday closing more than the desire to open, and it is their privilege to do so under this bill.

Mr. Hampton: Is the domino effect of economic competition a myth?

Hon. Mrs. Smith: I think where they are directly adjacent and touching, there is more likely to be a domino effect. Hence, we have said from the beginning, where the regional government is there—

Mr. Hampton: So the domino effect is not a myth.

Hon. Mrs. Smith: The strength of it is a myth. I think you will find areas of the Niagara region that are closed and others that are open and have been so for years. You will find that St. George opened and the communities around it did not.

Mr. Hampton: The other thing your statement deals with, and it goes on at length, is that you talk about tourism a lot.

Hon. Mrs. Smith: Tourism is important to Ontario.

Mr. Hampton: Tourism is an important part of the marketplace of Ontario.

Hon. Mrs. Smith: Yes.

Mr. Hampton: I guess that is why you deal with it a lot in your statement.

Hon. Mrs. Smith: I think you can recognize that we examined the possibility of a more closed type of framework than we have presented in this bill as one of the options to be looked at. Indeed, we recognized that tourism was too important for us to recommend a highly closed type of structure, because too many smaller communities depend on tourism and would have to go to great lengths to draw up their own bylaws.

Mr. Hampton: What struck me in your statement was that I could not find anywhere—maybe I missed it because I had to read it quickly—that you mentioned a common pause day.

Hon. Mrs. Smith: I did not mention it. There is no great significance about that.

Mr. Hampton: What really strikes me about it is that when the Retail Business Holidays Act was last in court and was defended by your government in 1985, the quotation that appears in the factum of your government is:

"The Retail Business Holidays Act was enacted in 1975 to establish a common pause day for retail workers to spend with their families. It was the intent of the Legislature to slow the growing commercialism and materialism in

society and to encourage recreation and leisure activities on these common days of rest."

I do not see any mention of anything like that in your statement.

Hon. Mrs. Smith: You do see it, because it is there in the provincial framework, which is left exactly the same, representing the exact same common pause day framework that you had in the other act. But even at the time in 1975 when the original bill was passed, there was a recognition that there had to be exceptions and there had to be room, and it stressed tourism. It has grown into more than tourism, but tourism was recognized as essential back in 1975.

Howsoever, whether I used that word in my statement or not, this whole bill that is in front of you puts a provincial framework that contains a common pause day.

Mr. Hampton: Despite the fact that your statement deals almost totally with tourism and that you have already said tourism is an important part of the marketplace, and despite the fact that your statement does not deal one bit with a common pause day—it does not talk about commercialism and materialism and does not talk about encouraging recreation and leisure activities on a common day of rest—do you still hold that this legislation does not represent a fundamental change in the position of the government on some very important public policy issues, namely, that the marketplace is going to take precedence over labour legislation, that the marketplace is going to take precedence over a common pause day? That is what I get out of your statement because you do not mention a common pause day once.

1510

Hon. Mrs. Smith: Let me remind you that my statement was a preamble to going through the whole act. The very first thing addressed in the act, which I would have been addressing, was a provincial framework that represents the continuation of the common pause day concept. You are asking me questions now that will be answered as I go through the act.

You threw labour in there. I remind you that there is an accompanying bill on labour that will be broad enough to cover not only those involved in future but also those presently involved. The need for that was recognized with the change.

Mr. Chairman: Mr. Hampton, I do not mean to be inflexible. We have given you additional time. Perhaps I could go to Mrs. Cunningham, and if you have a burning question, we will come back.

Mrs. Cunningham: Perhaps I could just make a comment before I begin my questioning. I am wondering if others in this room are sharing my disappointment at this statement. First, I am not sure what the purpose of the statement is. Second, I find the statement extremely misleading to the public. I think it is making promises for these bills that are simply not true. The fact we use words such as "fair" and "enforceable" when it comes to such things as labour relations, sizes of stores and number of employees, etc., I think is totally misleading.

My first question to the Solicitor General would be, what is the purpose of the statement you made today?

Mr. Chairman: I might add that from my experience—others who have been here longer than I have may challenge this or agree with it—that is normally the way the proceedings start. I will leave it to the Solicitor General to make her own comment.

Hon. Mrs. Smith: That is right.

Mrs. Cunningham: Can you build on this comment?

Hon. Mrs. Smith: I would simply say that the statement was a preamble to going through the bill with you. I wanted to clarify certain myths, and I stick with my word, that have come to exist in the minds of many people. I cannot tell you how many people I speak to, including people involved in local government, who just do not understand because they have only heard the rhetoric and have not read the bill. There is a very heavy misunderstanding of the bill out there by the general public and it was my intention, before I go through it step by step, to generally point out that the public has the wrong impression. I thought it was important to do so with a broad brush before I went through it in detail.

Mrs. Cunningham: I am assuming you picked some of the highlights therefore to talk about today to all of us.

Hon. Mrs. Smith: Yes.

Mrs. Cunningham: I guess I would like to ask a couple of questions about what is missing. I am wondering why you failed to remark on employees. I am now talking about the quality of life of employees who would be asked to work on Sundays and why you would not have pointed out how you have made the legislation on the quality of life around their work or their conditions of work fairer or more enforceable under this act. Why did you choose not to comment on that?

Hon. Mrs. Smith: I would be glad to answer that simply by saying that, practically, you are getting to my closing remarks. My closing remarks will be an introduction to tomorrow's remarks by the Minister of Labour (Mr. Sorbara) who will be addressing those questions and the accompanying bill. That would be the most appropriate time for them to be raised.

Mrs. Cunningham: OK. I was just responding to your "myths." That was one of the myths you probably would want to respond to, given your interpretation.

I am wondering if, in looking at this, you looked at additional costs that were not referred to in the statement. I am now talking about the costs to the municipalities of services that would go along with some of the openings you have described in your remarks. Did you give any thought to the costs? I will be specific and talk about child care and transportation.

Hon. Mrs. Smith: I would only say that, as in the past, in this bill it will be up to the municipality, before it makes any decision as to whether to go more open or not, to look at the costs and the benefits that are derived from it. I have considered that. It has been in the past and remains an option, a consideration for the municipalities.

Mrs. Cunningham: I was not clear. I means costs to Ontario, since 80

per cent of those costs in general are costs to the province as opposed to the municipality.

Hon. Mrs. Smith: This has already been a local option. If they involve more costs to which we apply subsidies, then they become a part of the process. I remind the member that, as she well knows, the problem of when day-care is available is much broader than whether it is available seven days a week or six. It is not available for so many women at so many times of day when they work, like nurses and people who work in hospitals. Look at all the women who work other than from nine to five. So if this does nothing but raise the problem of inadequate day care, you and I will both be satisfied.

Mrs. Cunningham: My question is very specific. Did you look at the cost to the province and do any long-term, future—

Hon. Mrs. Smith: No, that is not our concern. We are simply paying a certain percentage of—

Mrs. Cunningham: No projections on what it may cost.

Hon. Mrs. Smith: As you know, we do not have a completely open budget in day care, regardless. But the local decision would bear and certain moneys from the province might follow in certain areas.

Mrs. Cunningham: OK. On page 2, you talk about the requirement being "stricter, fairer and more enforceable than the old law." Are you aware that this new law in fact will close a number of drug stores that are now open?

Hon. Mrs. Smith: We will be going through that. That is part of my going through the bill.

Mrs. Cunningham: Could you give me an example of what is fair? I have just given you an example of what I do not think is fair.

Hon. Mrs. Smith: With your tolerant blessing, I have the drug store clause and other clauses. That is all in the walk-through of the bill.

Mrs. Cunningham: My point then is that requirement is not fair, and that is why I am pointing it out at this time.

Hon. Mrs. Smith: I think as we discuss individual clauses, we will be better able to deal with it.

Mrs. Cunningham: Let us get into the third myth, "a new and onerous responsibility on municipalities." That is on page 6. I always believed that you did believe in the principle of a common pause day in Ontario. I too will remark that I looked for those words throughout the brief and I did not see them, so my assumption is that you no longer believe in the principle of a common pause day in Ontario. Would you state whether that is true or not?

Hon. Mrs. Smith: If you look at the bill, section 1, provincial framework and the list of holidays, you will find "Sunday" in subclause (ix) of the holidays listed. That is all-inclusive, every Sunday in the year. That sets out your holidays right there, and it sets out your common pause day.

Mr. Chairman: Your colleague wished to have another question. I am not going to be sticky, but maybe you would like to save your—

Mrs. Cunningham: You do not like my questions?

Mr. Chairman: No, I love your questions, but your colleague is looking for a little time. Maybe she would like to ask it through you or whatever.

Mrs. Cunningham: I will just ask my last question then. What municipalities did you consult with—again, I am on page 6, and obviously, there would be more questions—or did you consult with the Association of Municipalities of Ontario around the definition of "tourism"? What kinds of definitions did you look at that were put forth by municipalities such as London or by AMO in preparing this legislation? Since you talked about the difficulty in using the tourist exemption, which ones did you look at?

Hon. Mrs. Smith: I met with AMO on this. They refused to discuss any of these issues. Nobody, not the Coalition Against Open Sunday Shopping, not any municipality, has proposed a definition of "tourism" that it believes would stand up in the courts and apply across the province.

Mrs. Cunningham: I do not want to leave anything unsaid here. I know the mayor of London did tell you that they were prepared to work with you on the definition of "tourism" if it was of any use.

Hon. Mrs. Smith: He said that personally to me, but AMO, when I met with it subsequent to that, did not want to discuss the whole matter. It wanted to take a firm position about what to debate.

Mrs. Cunningham: I just want to make London's position clear since I represent London North.

Hon. Mrs. Smith: The mayor did not speak to me officially. He later spoke to AMO, which spoke on behalf of the municipalities. The mayor did not subsequently, in a personal way, as he made that remark in a personal way, come forward with any suggestions.

Mrs. Cunningham: I was just aware that there were some municipalities that would love to have had the opportunity to grapple with the definition of "tourism."

Hon. Mrs. Smith: They had the opportunity.

Mrs. Cunningham: You have just said you did not look at any of those definitions. That is all I wanted to know.

Hon. Mrs. Smith: I did not look at any because none were proffered to AMO or through AMO or sent to me. We worked through AMO as requested and AMO would not get into this sort of discussion. I have suggested to them that if they have anything to say other than that they are against the bill, if they have any proposals—they have not had any up until now.

Mrs. Cunningham: So my direction to the municipality should be, "If you have a definition of 'tourism,' bring it to these hearings." Would that be correct?

Hon. Mrs. Smith: I think at this point there are many things on the table. It is not just that.

Mrs. Cunningham: But that would be very helpful, since the underpinning of this whole legislation is the lack of a definition of "tourism."

Hon. Mrs. Smith: There are many things addressed in the bill, not just tourism.

Mrs. Cunningham: But that would be a primary one, would you not agree?

1520

Hon. Mrs. Smith: It is interesting, because no municipality took on another municipality in challenging what it called tourism, and the Coalition Against Open Sunday Shopping has not taken on any group and said, "This obviously is not a tourist attraction." It is simply the definition of "tourism" in that sense, unless you are going to stand up someone with a little something around his neck saying, "I am a tourist," and he is willing to swear to it.

Mr. Chairman: Mrs. Cunningham, I do not want to be sticky, but in fairness, we have allocated time and you are over by quite a bit. I think your colleague wants to ask a question, but before I do that, to make it even fairer, I am going to go back and let the New Democratic Party have another minute or so.

Mr. Philip: I just have a supplementary, because it is not clear to me exactly what you are saying your relationship with AMO was on this matter of the tourist exemption. Can you tell us when you specifically requested it, or did you specifically request AMO to assist you in coming up with a more workable tourist definition? When did you request that? When and in what form was the rejection from AMO?

Hon. Mrs. Smith: I met with AMO, explained our problem, explained other problems, discussed with it. AMO was reluctant to discuss it and nothing was submitted.

Mr. Philip: When did you meet with AMO? Who did you meet with? Did you specifically ask them to assist you in coming up with a more workable tourist definition? That is the question. You have not answered it.

Hon. Mrs. Smith: I met with AMO—I would have to get the dates; we would have to look that up—in the company of the Minister of Municipal Affairs (Mr. Eakins) at one of its meetings. I spoke with them subsequently, but that would not be the same sort of official meeting. Mr. Eakins, I believe, met with them on other occasions. I asked for anything they wished to submit with regard to the bill. Tourism is not the only example. These 130 dots on here do not all represent all tourism; they represent as well the wish of municipalities to open for reasons other than tourism. I emphasized that. We gave you Chinatown as an example in here. It is not tourists who shop there; it is the local people who live there who shop there, so I am not saying we had nothing to address for tourism. If I gave you that impression, I gave you the wrong impression.

Mr. Philip: Is it or is it not true that you did not specifically ask AMO to assist in coming up with a more workable definition?

Hon. Mrs. Smith: I told them that we did not have one and that this, along with other matters, was our problem. We have had no input back from them.

Mr. Chairman: We will be hearing from AMO, as well.

Mr. Philip: You did not specifically ask them, though, for assistance on that.

Hon. Mrs. Smith: I specifically asked them for input into the bill, if they wished any.

Mr. Philip: Oh, so then you asked them for specific input into the bill. Prior to initiating the bill, which is supposed to be, in your words, caused by this terrible problem of the tourist exemption, you did not ask them to help you in coming up with a better definition of "tourism." Is that correct or is it not correct?

Hon. Mrs. Smith: A lot of it is completely wrong. You will note in my statement that I refer to cultural differences being part of the cause, not just tourism. Therefore, you have tried to make me say something I did not say.

Mr. Philip: I am simply asking you to answer the question.

Mr. Chairman: I think we will end on that point, unless the Liberal caucus is allocating extra time to the—

Mr. Philip: If the minister does not want to answer the question, that is her prerogative.

Mr. Chairman: I am going back to Mrs. Marland, because I said I would.

Mr. Kanter: Mr. Chairman, you decided that each opposition party would have 20 minutes.

Mr. Chairman: I did not decide it; the committee decided it.

Mr. Kanter: As I recall, the first portion of the minister's statement, and I think it was only the first portion, was approximately 30 minutes in length. Now approximately 50 to 55 minutes have elapsed. There was one brief question asked by the Liberal Party. I suggest that each opposition party has had at least 20 minutes to ask questions.

Mr. Chairman: They have had 23 and 22 minutes.

Mr. Kanter: It was my understanding that the agreement was 20 minutes.

Mr. Chairman: All right. If it is the wish of the committee that we should stick strictly to it, that is fine, but I am prepared to give, and I assume the committee would agree, one more minute to Mrs. Marland so that she will equalize the time that has been given to the third party. I think that is fair.

Mr. Kanter: I think we are getting off on a slippery slope here.

Mrs. Marland: Did you raise a point of order?

Mr. Kanter: Yes, I am raising a point of order.

Mr. Chairman: It is a legitimate point of order, that we did agree to a specific time frame.

Mr. Kanter: That time frame has already been exceeded and I suggest we move on.

Mr. Chairman: If that is the wish of the committee, we will move on.

Mrs. Marland: I would like to raise a point of order. If we are going to move on, we are certainly going to have a vote on this. We are certainly going to show that the Liberal members of this committee cannot tolerate their minister answering questions on her own statements. I would hope it is the wish of the opposition members of this committee that we continue to question the minister on her statement at this point.

If the defending ranks of the government members of this committee want to be so paranoid that we cannot even discuss this legislation and discuss the minister's statement, which I would suggest leads into the legislation, then I would wonder what is the purpose of this committee sitting at all. Surely you cannot be so concerned—

Interjections.

Mrs. Marland: Then let us continue with the questions.

Mr. Chairman: If you want to raise it in the form of a point of order, if you are talking about a vote on whether we should extend the time, I thought we agreed by consensus that it would be 20 minutes.

Mrs. Marland: OK, but we did not vote, and I will move now that we continue to finish the questions of the opposition members on the minister's statement before we proceed to the next presentation by the minister.

Mr. Chairman: It seems to me that if you have a consensus at the outset and then change that by reason of a motion after you have fulfilled the consensus, there must be something wrong with that. I would like to reserve on that question as to whether or not a motion of that type would be in order. Perhaps, in the interim, we could proceed with the question of the second part of the minister's presentation and I will hope to provide you with an intelligible, rational answer after that. How is that?

Mrs. Marland: I would think a motion is always in order.

Mr. Chairman: I have some difficulty with that, since we had a consensus at the outset. Perhaps I should ask the clerk, who has greater wisdom than I do.

Mrs. Marland: Consensus is not a motion.

Mr. Philip: Mr. Chairman, if it helps any, we will be voting against the motion for the reasons you stated.

Mr. Chairman: OK, Mr. Philip indicates that, but I would still like to be sure. The clerk indicates to me that although there was consensus of the committee, a motion would be in order. With all due respect to the clerk, I would still like to check that out. I have some concerns about that. That certainly puts committees in a very difficult situation if they agree consensus-wise on something and then change it afterwards. With your permission, and recognizing that Mr. Philip and his party are going to be voting against any motion you might make, I would like the opportunity to make a proper decision on that. Can we proceed with the—

Mr. Philip: May I please state the reasons I would vote against such a motion? I think it is important that when a committee sets out like this, we at least understand the rules.

Mr. Chairman: I appreciate what you are going to say, and rather than say it now, if I do rule or find out the ruling should be that a motion of that nature is not in order, then it would simply mean that what you have said, although it would be in the record, would not be of any value. Perhaps we could proceed, with the committee's agreement, on the second part of the minister's presentation. In the interim, I am going to check out whether or not where there is consensus there can then be a motion that would be directly contrary to the consensus. That is my concern.

Mr. Philip: I think we had consensus. I think the minister has not answered our questions, but since we did agree at the beginning to the 20 minutes, then I think we should stick to our agreement. Much as I would like to question the minister further on a statement which I think is certainly inadequate and answers that are inadequate, I think we should move on.

Mr. Chairman: There will be a second opportunity, obviously, as she goes through the bill. I am assuming, in the absence of any outrageous rantings, that we can proceed in that fashion. In the meantime, I will try to get an answer and give a rational decision on that question.

Hon. Mrs. Smith: I have distributed a book which is in your hands and which has, in section 8, explanations of the changes made in the bill or the new portions put in.

I think for the sake of everybody involved, it is important that we look at these so that we understand the thinking that went into these recommendations. I fully accept that you will not all agree with every decision made, but I think you are entitled to some understanding of the thinking in these. It is for this reason that I think it is important at this time to look at the revised bill and give to you the rationale for the changes.

1530

The first, I might say, will be the simplest, and I think nobody will disagree. We recognize we are no longer the Dominion of Canada and have changed the name of the first holiday, subclause (iv), from Dominion Day to Canada Day.

To clarify a little bit more, subclause (viii), "the 26th day of December," is changed to that specific wording to do away with any confusion about what we mean when we say Boxing Day. Boxing Day gets to be many things to many people. Boxing Day sales now are commonly held the day after what we traditionally call Boxing Day. You get into the confusions that arise when Boxing Day falls on Sundays and so on. We declare very simply that December 26 is the day.

In clause 1(1)(aa), "municipality" is carefully defined to point out that indeed the larger group, in the case of the "metropolitan, regional or district municipality or the county of Oxford," has the final say and in fact the only say for that metropolitan, regional or district government. This is in keeping with what I have said already, and I do not think it needs any more explanation than that. It may be something you may hear about from some of the municipalities, but as we have put it forward, we think it keeps a clearer picture. We found that most governments, where there are regional governments in place, agreed with this recommendation.

Turning to section 2, this once again was primarily a clarification and a tightening up so that there would not be any confusion on the matter. We got into some discussion about this during the last two years, so we are being very clear here that employers and employees are equally liable, and the two clauses put forward are "sell or offer for sale any goods or services therein" or "admit members of the public thereto, on a holiday."

Once again, this is to avoid the confusion that could arise where people say, "We'll let you come in, look through and do your shopping on Sunday and phone in your order on Monday," or vice versa. There are so many little tricks of the trade that we wanted to make it clear that this was both the employer and the employee and that both individual clauses were part of the law.

Section 3 is, of course, the most important part of what we are saying. We have set forward the provincial framework. As I have said and emphasized, this is the opening, introductory part of the bill. It simply says the provincial framework is there. The province has not backed away and said there was no framework, as they did in Alberta, where they simply decided to let the municipalities bring in any laws they wanted and to get out of the matter altogether on their own. In Ontario, we recognized the wish of the province that there be a provincial framework and we have left it very much as it was in the old bill.

This is a framework that itself was discussed at great length by the select committee. By and large, it is not a framework to which I am wedded in such a way that I would not be willing to have a look at or consider some alterations in it. I think you can examine it when people come and speak to you about it. If, indeed, there are areas that you think could be improved in the provincial framework, then please make recommendations to us on that.

I basically want to make it clear that this provincial framework becomes the law if a municipality does not opt, for whatever reasons it chooses, to change that provincial framework. If we made any changes in there, that becomes a change that would have to be addressed by municipalities. If they have gone along, so to speak, with the provincial framework up to this time and we change the provincial framework to be tighter or to disallow certain types of business, then indeed the municipalities would have to look at it and decide if they agreed with the change we made or if they felt in their municipality it was better the way it was.

We think probably it was best, since people generally seem to be satisfied with that provincial framework, to leave it as is, but to leave it for your discussion.

The Acting Chairman (Miss Nicholas): Mr. Philip, have we decided whether we are questioning as we go along?

Mr. Philip: I think it makes some sense, when the minister is

dealing with a specific item, to entertain questions from the members as she is giving an explanation. Otherwise, we are going to end up going at it all over the place.

The Acting Chairman: Does the committee feel it is appropriate that questions go on during the explanations? Thank you.

Mr. Philip: The minister will recall that the report she signed in the select committee came up with a different figure. I am not arguing the figure, but I would like to know. There is a considerable discrepancy of some 2,500 square feet in your figure as compared to the recommendations of the select committee.

Hon. Mrs. Smith: Are you talking about the drugstores?

Mr. Philip: Yes, I am talking about the drugstores, the pharmacies.

Hon. Mrs. Smith: Just for continuity in discussion, as you say, I have not yet spoken to the drugstore one. I have a separate comment on that.

Mr. Philip: OK. Then just on this, can you explain the rationale for the 5,000 square feet? What studies, what—

Hon. Mrs. Smith: That is the next thing I am going to deal with, the drugstores. I might ask, since we are going to do it piece by piece, if anyone has any questions about what I have dealt with, because I am going to deal with the drugstores separately.

Mr. Philip: OK.

Mr. Chairman: Is that all right, Mrs. Marland?

Mrs. Marland: Yes.

Mr. Chairman: I understand that the committee has agreed to do it section by section, so we will defer that.

Hon. Mrs. Smith: The drugstores are probably one of the most troublesome parts of the bill to deal with in the present situation that has developed within our communities. You had an intention under the old act that drugstores, as they then existed in that community, should be left open so that drugs could be dispensed along with, as the bill says, pharmaceuticals and sundries. What we have seen develop around the province is a completely new type of drugstore. I think we all recognize this. You have to go to a very small community before you get what we think of as the traditional drugstore.

I would point out as well, as you know, that the abuses that have grown up around this drugstore definition have been the most difficult for municipalities to deal with. The old drugstore definition was defined by number of employees and by the term "sundries." Once again, from the point of view of enforcement, it has become more and more difficult, if not impossible, to enforce by the number of people in stores. I would even say to you that at the time we were discussing it before, we considered the potential that with more mechanization you would get bigger and bigger stores with fewer employees. Therefore, it became more possible—and it obviously was done—to flout the intention of the original bill with regard to drugstores.

We therefore almost had to start from scratch as to what should or

should not be allowed in the way of drugstores being open. What you find, looking around the province today, is that, by and large, small drugstores in many communities have become the minority situation, the really small ones, the 2,400-foot ones, although there are some of them still around.

We had a great deal of trouble getting facts and figures on this, but we were able to ascertain from what we thought was going to be a reliable source, namely, the retail druggists' association, that 5,000 square feet would provide the kind of footage that would ensure most communities having a drugstore open in their community. This really was the reason for the 5,000 figure, to try to accommodate the existing situation in communities as they are today. If we could turn the clock back 15 years, I do not think we would have looked at it the same way. But these stores have indeed grown up, and I know you will be hearing from the drugstore groups.

They have grown up in many communities. They are bigger. I do not even refer here now to the big ones, the Herbie's and Howie's and all that sort of thing, but to the next size down. Mrs. Marland objects to my advertising chains and so on, but I will say the Big Vs and those sorts of groups that are going to appear before you.

1540

It turns out now that over the last few years they have largely developed their store size to 7,500 square feet. I have met with them. I know you will be hearing from them on why they think 5,000 is too small.

I recognize and point out to you that 2,400 is what we have allowed in convenience stores. If you think of the new convenience stores around our province, that is 2,400 feet. The new ones have all built almost specifically to the 2,400 square feet. Hopefully, the 5,000 allows for existing drug stores to keep services open.

If the bill stands exactly as it is, if in some communities they wanted to reduce that to 2,400 and thought that was not a threat to providing drugs in their community, and indeed if they felt it made a fairer law, then they could do it locally. Certainly, looking at the size of drugstores is something this committee is going to be doing because you are going to be hearing about it. Only you are going to be hearing about it with pressure in the opposite direction.

I say this personally. I was looking at the size of drugstores. I made an effort to walk through drugstores and see. Even within what are standardly called drugstores, although they are not what we define as super department stores, they do indeed have gift sections, children's clothing sections and so on.

This is a very difficult situation. This committee will have to look at it and try to find the fairest solution. It will be pointed out to you that these stores built and created businesses under what was legal in the old law and that communities have come to depend on them under what was legal under the old law. Abuses of the intent of the act obviously crept in in the great, huge drugstores, the Howie's and Herbie's, which barely serve drugs.

Those will continue without correction because you will soon have stores that are basically some other sort of store with a prescription counter in the back. We have a place in London that calls itself a health centre. It is not really open to abuse yet, although we have a Herbie's there. I think the

member for London North (Mrs. Cunningham) would know the one I mean, at Base Line Road and Wharncliffe Road. I could envision a prescription counter opening there and then its calling itself a Sunday-open store.

I am not going to be dictatorial to you in how you should be dealing with this drugstores exemption. I would only point out to you that our rationale was to try to cover the situation as it existed. We were told by the drug retailers, as I repeat, that this would make sure, by and large, that people had drugs available to them on Sunday. That was the reason for the 5,000 square feet.

It certainly will be questioned as to whether it is ample or not ample or too ample. I would remind you that no matter what you end up with as a decision of the committee to recommend to us, it probably will not satisfy everybody or maybe not nearly everybody. But I will point out to you that as we go through the bill, you will see that the municipalities will have the option to change that if they wish.

Now you can question me on the drugstore thing. I admit it is a difficult one.

Mrs. Marland: It is a question of the size of the area that is going to be permitted. I am interested that it was the drug retailers that came up with that figure. That is what you said.

Hon. Mrs. Smith: They did not come forward with it in a lobbying sense. We did not have those statistics available and we asked them what size would cover it. We got the information from them.

Mrs. Marland: Right. The 5,000 did come from them. A concern has been raised to me by a particular chain which is down from the two department-type stores you mentioned. This chain that I heard from, first of all, is a franchise chain so they are individually owned and they are individual pharmacists who are responsible for those stores.

What follows with those stores is that they have their individual patients' prescriptions. It is perfectly true that this figure would to some degree make available, to use your own words, drugs to them on Sundays, but the problem comes in where they do not have available to them their prescriptions if they normally are at a store that is between 5,000 and 7,500 square feet; today a standard type of drugstore in this major chain that you would be very familiar with is anything from 5,000, 8,000 or 10,000 square feet, and it is still not the kind of store that sells clothing and everything else under the sun in the department format you speak of.

The concern for these patients and their health care in the province is a very serious concern because the fact is that if you run out of your medication on Saturday, and if it is a certain type of medication, not the least of which would be something to do with heart medication, you cannot wait until Monday. If you go to the pharmacy that is open, that is 5,000 square feet or below, and he cannot fill your prescription because he does not have your records—if your doctor were to give you a prescription to get that filled, unless the filling pharmacist has on record all the other medication you are taking, it is not as simple as saying, "Here is my prescription," on a Sunday and filling it. That pharmacist has to know your total medication picture, and that is where it becomes very critical.

For that reason, they are suggesting that it should be up to 7,500, and

I am just placing that as a request on the record. My question to you was simply if it was specifically the drug retailers who established the 5,000 square feet, and you have said yes, it was. But did they address the question of prescription records for the patients?

Hon. Mrs. Smith: You see, they answered our question. As I have said to you, I have heard the same arguments you have when I was lobbied by the drugstore chains. It is a completely different circumstance. They were not lobbying us to do anything. They were answering our question.

With regard to the lobbying—and I have heard the same thing—we have a committee studying prescriptions. I think the answer is far more complicated than simply Sunday opening. We recognize that 70 per cent, I think it is, of the seniors admitted to hospitals has to do with drug problems. The problem is much more complex than just one more day's opening.

I note with interest that these same drugstores which are so concerned about your health on Sunday close at seven o'clock, most of them, on Saturday evening. So it is all right to get sick Saturday evening, but they will save your life on Sunday. I imagine they probably close Sunday at six and you will get through till morning.

So it is more the convenience aspect. You may decide to agree with them—I am not directing the committee—but I would remind you that the question of drug prescriptions probably may get to have some sort of computer answer. I do not know what the drug committee is going to recommend. I do know that seniors move around enough, go out of town enough and deal in enough different places that it is not as simple as just having your old community drugstore. Older people are very mobile now, as are younger people.

Mrs. Marland: I want to make it clear that I am not speaking on behalf of the commercial aspect. I am speaking on behalf of the people I represent who require medication on Sundays. The point is that those stores are computerized today. Today you go in, and on the computer they have your total record of what your whole medication picture is, but the store that is open down the street, that you go into because your store had to close because it's 5,100 square feet, does not have that record. Because we are dealing with your bill and your amendment, I am not discussing the rest of the problems with filling prescriptions.

Hon. Mrs. Smith: This bill is in the hands of the committee at this point, and therefore, you cannot refer to it as my bill. I have told you that there is this problem. I look for you to listen to these people and to consider the aspects. I advise you to look at the drugstores out there, because a lot of them do have all these little departments in them. I would remind you, as far as the drug prescription thing is concerned, that it seems to me that in a world where we are now getting all the money banks tied together so that you can use your credit card in any—

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Mr. Chairman: That is if you have any money in there.

Hon. Mrs. Smith: That is right. It may well be that the Drug Quality and Therapeutics Committee will recommend a central location for such information. I would not be surprised. It is a very complex problem.

Mrs. Marland: At the bottom of page 6 of this report you are reading

from, the statement is made, "Very few, if any, communities in the province have only drugstores which are in excess of 5,000 square feet."

Hon. Mrs. Smith: That is right.

Mrs. Marland: I would like to ask you what kind of statement that is? Is it saying very few or is it saying there are not any? It says, "Very few, if any."

Hon. Mrs. Smith: Once again, our information was from the association of retail drugstores. I do not know of any. We do not have openings and closings of stores that I know of, so I cannot tell you. I know that in Grand Bend we have one small drugstore that is still open there. I think it probably could—I do not know, I think it is open year-round. I do not think the province would have records that could tell me whether it is open year-round or not.

Mrs. Marland: I can tell you that in Muskoka there would be situations where the nearest drugstore could be 30 or 40 miles away, once you close the one that is bigger than 5,000 square feet. That is why I think, from the information that has been given to me, the figure of 5,000 is too arbitrary at a low end.

Hon. Mrs. Smith: You see, you got your information from a chain that has drugstores of 7,500 square feet and I got my information from the retail drug alliance of Ontario, or some such name, and you will have to place a judgement on the information you will hear in the committee.

Let me remind you once again that if you live in a community where there is no drugstore other than a 7,500-square-foot drugstore, you may want to look at this and grandfather that drugstore in your own bylaw. This is what I would like to emphasize throughout, that local problems that have to be addressed by local governments will keep raising their heads, and that is an example.

I would also point out that there are all kinds of people in this province who are not within easy reach of drugstores a lot of the time. Hospitals do dispense drugs in an emergency; and for people who are beyond the reach of hospitals in any which-way, their problem is not going to be one of retail Sunday shopping, it is a problem of health care.

Mr. Hampton: Can I ask you to reiterate what the problem was or is with drugstores?

Hon. Mrs. Smith: The problem is, and was, that the old law, the law that is still in effect, puts no size limit on drugstores, making it possible for these huge drugstores to exist. There is nothing in the law that says they cannot exist and continue to grow, as long as they hire only four people. I suggest to you as well that we looked at the possibility of trying to define sundries, soap and all these sorts of things, and felt that just as roping off becomes something that is really impossible for police officers to enforce their judgements on, this too would become impossible, that with a clear definition of a size you can say you either are or are not this size. This is the only way to go about it that would make it enforceable. That is why we went for the size.

Mr. Hampton: You are saying that the limit of four employees—

Hon. Mrs. Smith: That is gone now.

Mr. Hampton: The limit of four employees—

Hon. Mrs. Smith: It did not work.

Mr. Hampton: Why did it not work? I would assume that your ministry has some understanding of why it did not work.

Hon. Mrs. Smith: There were two reasons why it did not work. The original bill intended it to be drugs and sundries. The ministry is of the opinion that you cannot have a policeman behind every cash register checking that people have only drugs and sundries in their bag and trying to lay charges and uphold them in a court on the level of that sort of law. This is what we are advised by the Attorney General's department and by our own enforcement officers, many of whom may personally have liked to have seen a different bill, for all I know, but they are simply speaking to the enforceability and actions against such a definition and saying they cannot be made to work effectively.

Mr. Hampton: I have a problem with what you are saying here, because I was just in Manitoba on the weekend, on Saturday, and I am well aware of the Howie's department—I call them department stores now.

Mr. Chairman: Howie's?

Mr. Hampton: Yes, well, you know.

Mr. Chairman: No relation.

Mr. Hampton: I always thought it was a nice, soft name and very attractive.

Manitoba has the same legislation we have.

Hon. Mrs. Smith: I know they do.

Mr. Hampton: They have no problem. In fact, the Howie's department store had a sign right on the door, "Due to the province's decision to rigidly enforce the four-employee limit, we shall remain closed on all Sundays in future."

Hon. Mrs. Smith: Do not forget the other half of Manitoba's law, that if you are a grocery store, you can open as long as you only have four employees, or if you are a hardware store. The unfairness is not there, because it is applied to every store.

What we have is in fact a drugstore that we say can open with only four employees, but they may have a hardware store and if it is bigger than the hardware store it cannot open, or the gift store that cannot open, so ours had inherent in it an unfairness.

Manitoba says any store in the province can open if they have four employees. I would not want to touch that bill, but if they find it works, I am happy for them. It is simple.

Mr. Hampton: Let me ask you: We have chosen to limit other stores in other ways. It seems to me—

Hon. Mrs. Smith: We are dealing with a provincial framework, and we

have chosen to close most other stores in the provincial framework.

Mr. Hampton: I understand that. What Manitoba has simply said to store owners is: "If you can run your store with four employees, fine. If you have a large Howie's department store and you want to bear the risks of shoplifting and you want to deal with inventory control with only four employees, then that is your choice, but if you want to employ more than four employees and get caught, you bear a hefty fine."

If it is enforceable in a metropolitan area like Winnipeg and it is enforceable in a rural area, I have difficulty understanding why it could not be enforced here.

Hon. Mrs. Smith: Manitoba has a law it opted for. We had a law and people seem to want some continuity to it, and I agree that our present proposal—and we are discussing just the provincial framework now—is more closed than Manitoba. I do not know if you are proposing we should be more open. Manitoba's law seems to me to lend itself to far more openness than what we have proposed as our provincial framework. Maybe that is what the people of Ontario want; that is not what I seem to hear.

Mr. Hampton: You have said throughout your statements and you have said in reference to the drugstore situation that it is very difficult to enforce in Ontario. I offer you the situation in Winnipeg, which I am acquainted with, where the large department store type of drugstores have simply said, "If four is the limit and if the fine is \$50,000 if we get caught, it ain't worth it, we'll close on Sundays." You put the person who wants to engage in a competitive marketplace in that choice, and if you can and if you think you can run your store with four employees, so be it.

Hon. Mrs. Smith: In our provincial one, we are not putting them all in that position, we are taking only one select group and putting it in that position. Therefore, there is an inherent unfairness in it.

Mr. Hampton: Is that what makes it less enforceable in Ontario? Is that what is causing the enforcement problem in Ontario?

Hon. Mrs. Smith: I do not know whether Manitoba is finding the enforcement problem is perfectly resolved. If so, I congratulate them for it. I do not think the people of Ontario want us to go to the Manitoba law, and to go to it with only one segment would not be my idea of fair. Howsoever, that is not necessarily your opinion.

Mr. Hampton: I still want an answer to the question. In Manitoba it has not created an enforcement problem.

Hon. Mrs. Smith: You say so. I do not know if it has or has not. They may be quoting what we have here and saying we do not have any problems. I am telling you we do.

Mr. Hampton: Is it not true that the enforcement problem here in this aspect is simply that the fine is not great enough?

Hon. Mrs. Smith: No, that is not the only problem with it.

Mr. Chairman: We would not know that until it was—

Hon. Mrs. Smith: The thing is that if you are running the store with

four people, you do not need to be fined and you may still be able to do unfair things with regard to other small stores that are your competition that are kept closed. In Manitoba those stores can open.

I do not question that some of these drugstores could operate with four people. All right? They would not be breaking the law if we defined it by four people, but next door is a little teeny store that sells giftwares which is not allowed to open. In Manitoba, they would be.

1600

Mr. Sola: I am getting a little bit confused by the questions of the opposition.

Mr. Philip: It is all right. So is the minister.

Mr. Sola: It seemed at first that our bill was designed, according to their questions, to open up Sundays completely, and now that we have come to the drugstores section, it seems that we will be closing the province down completely now. I just do not understand their line of questioning.

It is one bill, and if it is going to open up everything else, how can it close down drugstores? If it is going to close down drugstores, it should be closing down everything else. Could you please explain the discrepancy here? What is being closed? What is being opened? Is it a bill to open up Ontario, to close down Ontario or just simply to regulate Sundays?

Hon. Mrs. Smith: I want to point out to you that this particular clause, this drugstore clause we are discussing, is under the section of the bill dealing with the provincial framework. This only applies with a community that wishes to do nothing, to live within our framework, not pass any bylaws, not have as much, probably, openness as we have right now. The framework as it stands there will not make for more openness, it will make for less openness. This drugstore exemption applies only to those communities that wish to live within the framework. Therefore, we have to look at their particular situation because they have developed in Ontario, due to the old bill, in a particular way. They have developed, in a sense, oversized, they have got fat and it is hard to slim them down and it is hard to throw them all out and down to the 2,400 size.

You, as a committee, may decide that you think it would be fairer all around if the provincial framework said 2,400 feet, drugstores included. That was the recommendation of the select committee. Then you go to Mrs. Marland's question about whether that is going to leave too many communities with no service at all and so on. It is possible you will look at it and say, "If we say only 2,400 feet, you'll find new nice family pharmacies springing up and it will be a very healthy thing in this society." That is one way of looking at it. The problem exists, but this is only applying to communities where we have a provincial framework as the law. Outside of that, you can make any bylaw you want on it for a community that wishes to go outside the provincial framework.

Mr. Sola: OK. What you are saying then is that the provincial framework is designed to close Ontario for Sunday shopping?

Hon. Mrs. Smith: To close it down more than it is closed now. We do not propose to close convenience stores, restaurants, gas stations.

Mr. Sola: Except for the exceptions.

Hon. Mrs. Smith: We propose to close it down to the extent that it is closed now, and probably more closed, because we are tightening up, on drugstores especially. This is where you are going to see the province more closed than it is now. Other than that, and doing away with abuses in roping off and that, you would see the type of stores we have now, which people, we believe, have become used to—convenience stores, restaurants and so on—pretty much the way they are now, but the roped-off stores have changed and the drugstores are probably whittled down in size.

Mr. Sola: In other words, you are just confirming what you said in your statement, that the concept of open Sundays is a myth?

Hon. Mrs. Smith: That is right. This provincial framework will see communities with stores closed that were previously open, rather than the reverse.

Mrs. Cunningham: I am having trouble with the purpose of the provincial framework if it can be changed willy-nilly by the municipality. I do not understand. I thought a provincial framework, in essence, was probably supporting a philosophy that the province agreed with, and that is the philosophy of a common pause day. I thought that is what you stated. I am having trouble when we say if they do not like the provincial framework, they change it. That is really giving me a problem.

Hon. Mrs. Smith: I think the flexibility that is in the existing law, which is giving you a problem, is essential in a province like Ontario. People get upset if I refer to tourism, but this was one of the reasons that was obviously present in 1975 as one cause for flexibility. There are other causes for flexibility, and while we set forward a provincial framework with a common pause day, we none the less—and particularly in our labour legislation, which comes tomorrow as well, recognize the common pause day, but we recognize the need for flexibility. That is the philosophy.

Mrs. Cunningham: OK. That, to me, does not make a philosophy at all, but given the issue around—

Hon. Mrs. Smith: We considered a rigid philosophy.

Mr. Chairman: A rose is a rose is a rose.

Mrs. Cunningham: To you it may be.

On the issue of the drugstores, I would not be proud to go out and say we are writing legislation that now closes the drugstore which in my community at least has been open for 19 years, which has served the community where I live, Orchard Park in London, for 19 years, since the day it opened.

Hon. Mrs. Smith: Then you may wish to address the committee on that.

Mrs. Cunningham: That is serious business, and I would not be proud to say that. Of course, in London, we are not suffering as many rural communities are. If you cannot get your prescription at one drugstore, you go to another. I would think that would be something we would not be proud of, the reason being that the smaller drugstores around choose not to open, and the municipal option would not make them open. They just choose not to open.

Mr. Philip: Unless they are in a shopping centre.

Mrs. Cunningham: Well, they are not in a shopping centre. You are quite right. There are small businessmen who choose not to open. Now, this particular person happens to be a small businessman who has four employees, and there has never been a problem.

My plea to you, Mr. Chairman, would be to get us some good research. This committee needs some good research. I do not want to sit here and argue about 7,500 square feet, 10,000 square feet or anything. I just do not want to argue about it.

I listened to a brief that was brought to my constituency office, which I am sure the rest of you have heard as well. We sit here as individuals; never mind the party. I think what we are trying to do here is provide a service for the public. That was always the basis for a drugstore being a store that could open on Sunday, because somebody at some time deemed it an essential public service. Lots of things have happened. The Solicitor General has already described them. I agree with her. I think it is an extremely complicated issue. If this is the provincial framework, I still believe a drugstore is necessary to the community and I do not think we should be relying on the municipality to open it if we close it.

Mr. Chairman, I am asking you if you would look into the municipalities that would be affected adversely by the 5,000, the 7,500 and the 10,000, instead of sitting here arguing day in and day out.

Hon. Mrs. Smith: I do not know if you can define what you mean by affected—what was the term you used?

Mrs. Cunningham: Adversely.

Hon. Mrs. Smith: Adversely. I think that could become very controversial in itself.

Mrs. Cunningham: I am not going to say that. I am just saying it is not controversial to me. If you have a whole town where there is one drugstore open because three small ones choose to close, and the one drug store open is 8,000 or 9,000 square feet, to me that is not controversial. That is something that this committee or the province should be deciding on, not the municipality. If we have a framework, let me help you with your legislation, to live with it.

Hon. Mrs. Smith: I point out to you that you raised the particular city. You said "in my community, in this situation." It may be the very example of a place where you need local solutions, but I will be listening to the recommendations from the committee on this matter.

Mrs. Cunningham: I asked the chairman for some information.

Mr. Chairman: It is also an opportunity to announce that Susan Swift is our research person and she has nodded affirmatively that she will provide us with that information.

Ms. Swift: I will attempt to do so, but before taking that question away, I would like some direction on what you mean by "adversely affected." Do

you mean a municipality that would be left without a drugstore in one of those three situations?

Mrs. Cunningham: That would be blatant; yes. To me, that is "adversely." The example I have given in my local municipality may be a harder one to define. The fact that it happens to be the only one open in that part of the town on Sunday—given four shopping malls, this is the one that has a drugstore open—I think probably someone could argue that.

When you take a look at the number, which happens to be something like 9,000 square feet, the committee may choose, because of the research you do—otherwise, we are going to close down 20 important drugstores, meaning the singular one in the community or the one that somebody has to drive more than 10 kilometres to, whatever you decide. Given your own skills as a researcher, perhaps you could bring it back to us objectively and tell us what communities would be totally missing a drugstore, given your information.

That may take some phone calls to a couple of small druggists in Gravenhurst asking, "How come you are not open on Sunday?" or, "Would you open on Sunday?" It might be a bit of work, but I do not think we should be arguing it without the facts. That is my point.

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Hon. Mrs. Smith: I am glad she will do this for you. There is another point I would make, though. We have jumped from 2,400 to 5,000 to 7,500 to 9,000. I only point out to you that the sizes can go on endlessly and the problem goes on endlessly.

There are three possible solutions when you get your information and consider it. I remind you that you will have various solutions. You will have the option of recommending a change in size; in other words, down to 2,400 like the convenience stores or up to 9,000. That would be one of your options.

You have the option of recognizing that municipalities can do that on their own without this committee doing it and thereby creating a market, so to speak. You would have the option, or the municipality could have the option, of grandfathering such existing stores in the municipality because of their local problem.

I ask you to examine at the same time and do some walking through different kinds of drugstores in your community. Look and see what they are really selling and look at the size of their departments that are nondrug. Consider that because the small stores with which they compete cannot afford and do not have the sophistication to lobby and hire lawyers. So you have to be the lobby and the lawyer for the little gift shop and others and then come to your decision as fairly as you can. It is a difficult one. I will be listening. It was hotly discussed by many people.

Mrs. Cunningham: If I could just make one comment, I am not here to lobby for anybody. This legislation clearly gives that right to the municipality. I am here to talk about the provincial framework. In my provincial framework that I want to support, we are not going to close an essential service, a drugstore, and take a backward step, given all the problems and challenges we have, which you and Mrs. Marland discussed.

That is the idea—this being a support to the family. As we go into the next century, everybody needs his prescription and everybody has it on a

computer. Those kinds of services are important to my family and I think they are important to other families. Times have changed in the last two or three years in that regard. I am only talking about what we call a provincial framework and I am trying to make it strong. I think one of the options would be that drugstores stay open if they want to stay open.

Hon. Mrs. Smith: Would you include Howie's and Herbie's in that?

Mrs. Cunningham: No, I would not.

Hon. Mrs. Smith: So you see, there is the problem.

Mrs. Cunningham: But I would look at that. I would not be looking at size.

Hon. Mrs. Smith: Everyone has a different line he is drawing. It is for you to discuss.

Mrs. Cunningham: That is right. Just so long as we get a framework where drugstores are open. That is what I would say. That was the original intent of the legislation, that drugstores be open.

Hon. Mrs. Smith: Howie's and Herbie's open on Sunday.

Mrs. Cunningham: That was enforceable in London and Howie's and Herbie's were closed in London.

Hon. Mrs. Smith: Herbie's was open last—

Mrs. Cunningham: Only now, because it is all up in the air.

Mr. Chairman: That is a question that has been left open for us to—

Mrs. Cunningham: I have asked for some research. That is all I asked for.

Mr. Chairman: Susan has indicated that she will try to get that. Perhaps we could move on, because we have a number of other items and it is 4:15 p.m. now.

Mr. Philip: Would you agree that you could have introduced legislation that would have had a grandfathering clause in it to allow exemptions for present pharmacists without going the complete opposite route of allowing the municipalities to allow any drugstore, be it 5,000, 7,000, 10,000 or 20,000 square feet, to remain open on Sunday, which is what your bill does?

Would you not agree that would have been possible? Why would you not go that route, rather than simply making it wide open where you are going to end up with some municipalities allowing Herbie's and other grocery stores masquerading as drugstores to open on Sunday?

Hon. Mrs. Smith: What a municipality does outside of the provincial framework will be the responsibility of the municipality. Under what we have proposed here, we have put 5,000 as what we consider a possible solution. It is a middle-of-the-road course. You refer to it as wide open. The member from

London North (Mrs. Cunningham) refers to it as taking away the rights of families and so on and so forth.

Obviously, as I have said before, it is one of the clauses in here that will not please everybody. You will have to decide whether the 5,000 is too much, too little or all right. The other possibilities you say of municipalities opening up all the Herbie's and Howie's, all these things, they can do it under this bill, regardless of this clause. I think what we need to do is get a solution to this clause that tries to reflect a good solution for those people who do not want to get into making exceptions. We recognize that exceptions can be made.

I will not discuss at this point the grandfathering because that comes later on. I will discuss it when we get to the clause with regard to, rather than grandfathering, making tourist exemptions. We have so far introduced no grandfathering into this bill, although it might be something, as I pointed out, that a municipality might want to look at.

Mr. Philip: With respect, they can only do it under the present legislation if they adhere to the present bill, which would discourage large grocery stores masquerading as pharmacies in those municipalities.

Hon. Mrs. Smith: The other way around.

Mr. Philip: You were a municipal politician before being elected.

Hon. Mrs. Smith: Yes.

Mr. Philip: You were from an affluent area and perhaps the good fathers who run the council of London might not be open to this kind of intimidation, but if you were in a smaller municipality, would you not agree that there would be a very strong temptation if Herbie's or the Ghermezians or someone came and said, "We will put a development in your municipality and it will generate X millions of dollars of municipal taxes, but only if you allow us, Herbie's, to open up a drugstore that is really a grocery store, not with 5,000 square feet but with 20,000 square feet"? Would you not believe that would be a very strong motivation, perhaps to an outlying municipality, maybe not Metropolitan Toronto, maybe not London, maybe not Peel.

Hon. Mrs. Smith: I suggest we are going through clause by clause and that question would be more appropriate later, because that could be a furniture store instead of a drugstore in your illustration.

Mr. Philip: But this is the clause that basically allows—

Hon. Mrs. Smith: The Ghermezians, as you say, is not a drug store. It is a city, in fact.

Mr. Philip: At the present time, though, you are arguing 5,000 and I am saying it is not 5,000.

Hon. Mrs. Smith: I am just talking to you within the framework.

Mr. Philip: I am saying it is not 5,000; it could be 20,000 if the developer can persuade the municipality that is the only way he will come in.

Hon. Mrs. Smith: This is in the provincial framework. What the

developer tries to persuade a municipality to do outside the provincial framework is another matter. We are talking about the provincial framework.

Mr. Chairman: I think we will get to that later on.

Mr. Philip: It is a great provincial framework that says the province has no responsibility and the municipality can do whatever it wants.

Hon. Mrs. Smith: It is not what it says; it says 5,000 square feet. You may not agree with that, but that is what it says.

Mr. Philip: And if it does not want the 5,000 square feet, then it can change it to 10,000, 20,000, 30,000 or 40,000, whatever your imagination or the imagination of the developer might bear. Is that not correct?

Hon. Mrs. Smith: Local option is in the bill.

Mr. Philip: I wonder if you can answer this question. You say that the roping off is—

Hon. Mrs. Smith: Why do you not wait until we get to it? I agreed that we should go through clause by clause, but we are going to hit—

Mr. Philip: We are talking about—

Hon. Mrs. Smith: Drugstores do not rope off. Let's be done with drugstores.

Mr. Philip: With respect, you were present when it was suggested by some delegations that drugstores over a certain number of square feet should be forced to rope off and that this was one possible solution to the problem of drugstores that have built over the number of square feet and an option over the restriction of the four employees. That is clearly in this section.

You are now arguing, although you did not argue it back then, that the roping off was unenforceable. You just said not so many minutes ago that in fact it would be difficult for your officers to look in baskets and find out whether Johnny Smith jumped over the rope and put commodities in that do not belong in that section of the store.

Mr. Smith: That's right; you've got it.

Mr. Philip: Are your officers not successful now in laying charges against that small retailer who may have Johnny Smith, under age, with a package of cigarettes in his basket?

Hon. Mrs. Smith: I think we are playing really far afield now.

Mr. Philip: No.

Mr. Chairman: It is enhancing my desire for a cigarette, but go ahead.

Mr. Philip: If you are able to successfully lay charges on a small retailer who happens to allow somebody under age to have some product from a shelf that he is not entitled to because of age, what is the difference between that and having some product that he is not entitled to because it

happens to be in the part of the store where it is not supposed to be sold on Sunday?

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Hon. Mrs. Smith: My answer to that would be that basically if your priorities are for programming and paying for a policeman in every drugstore to stand there to make sure no one goes beyond a certain row, it is probably enforceable. If that is your priority for what our police should be doing in this province, it would be enforceable. If you are asking about cigarettes, I think the cigarette law is largely enforceable because the people selling cigarettes agree that children should not have cigarettes and really enforce it.

I talk about community policing all over this province. Policing cannot be done just by policemen. It is a part of a community's participation in creating the society it has put into the laws. In the case of cigarettes, I think the people working in stores, by and large, agree with the law that children should not have cigarettes and enforce that law. I do not think we could make it enforceable if it meant having police look at every shopping basket.

Mr. Philip: It seems to me you are also the one who argued that adequate fines are a strong motivator for merchants not to sell a product or to disobey the law.

Hon. Mrs. Smith: I do not think fines would adequately stop people from selling cigarettes to children.

Mr. Philip: Then that is another flip-flop from the position you had taken earlier.

Hon. Mrs. Smith: I have never even discussed this previously.

Mr. Philip: It certainly is a position you took on the select committee. You said higher fines, and you were one of the persons to do it most strongly. Pardon me if I remind you of what you said in the past, but it is not so many months ago, so you should remember it. You said adequate fines are the way to stop some of these abuses. Now you are saying no, we cannot do it by fines, that it is unenforceable.

Hon. Mrs. Smith: I think we were considering the roping off. We knew the roping off was open to abuse. You will also find that in the Hansard there. Basically, I am convinced it is unenforceable. I have seen pictures taken of people skipping across little ropes and this sort of thing. I know it would take a mammoth amount of policing to ever make roping off usefully enforceable in these huge drugstores.

Mr. Philip: You talk about fairness. Is it fair to say, because people who are watching this may not have the previous bill or the present legislation, if you like, before them—

Hon. Mrs. Smith: They do. It is in the book here. Oh, pardon me; you are talking about the viewers.

Mr. Philip: —that what essentially you are doing with this bill is, if I were a merchant selling tobacco or foodstuff, if I were running a mom and pop shop, as they are sometimes called, I would be limited, at least under

this bill, unless the municipality decides differently, to 2,400 square feet, but if I were a druggist, I would be limited under this bill, unless the municipality decides differently, to 5,000 square feet?

Hon. Mrs. Smith: That is what the bill says.

Mr. Philip: I am wondering whether you have consulted with such groups you had so much empathy for before, such as the Ontario Korean Businessmen's Association, and asked them whether they feel it is fair that someone down the street should be able to have 5,000 square feet in which to sell the same goods while they are limited to 2,400 square feet? Did you receive the opinions of those groups before you decided to—

Hon. Mrs. Smith: You and I both know the answer to that. I have said to you from the beginning of this discussion of drugstores that it is a very difficult one in which you will not get perfect fairness whichever way you do it. On the one hand, you can look at the drugstores that have developed, as Mrs. Marland points out, and are franchised and so on, which people have put a lot of work into. Under our old law, they have developed to be too big for what the law permits for convenience stores and mom and pop stores. That is a historic fact and it is in front of you.

I say it presents some inherent unfairness, if you are trying to talk about the convenience store versus the drugstore. On the one hand, if you get way bigger than that, you present even more inherent unfairness with the drugstore versus the little gift shop or little hardware store. I am not telling you that you are going to produce a law that is 100 per cent fair to every merchant. You do your best to produce as fair a law as possible, but some of the things that developed under the old law actually are not in keeping with the spirit of the provincial framework.

Mr. Philip: I have one last question. You cannot table any research that shows how you came up with this figure. You cannot table any research that lists who you may have consulted as to what effects this kind of change may have on their businesses. Suddenly, out of thin air, you pick a figure of 5,000 square feet. You are not content to just pass the buck to the municipalities; now you are passing it to the committee and saying, "If you don't like 5,000, then change it to whatever other figure you want."

Hon. Mrs. Smith: I guess if you like 5,000, you are going to leave it alone. We got it from the retail druggists' association. I think I have answered your question.

Mr. Philip: Oh, OK, so now it is the druggists' association that is doing your research for you.

Hon. Mrs. Smith: No.

Mr. Chairman: I do not think that was what was said.

Hon. Mrs. Smith: I have said that from the beginning. I do not like your treating me as if I am making contradictory statements. That was one of the first statements I put to this committee.

Mr. Chairman: That is my understanding.

Mr. Philip: The druggists' association seems to be doing your research for this. I am sure we will find out that The Bay is doing your research for other—

Hon. Mrs. Smith: Write me out the name of that association. Do you remember?

Mr. Chairman: We will get lots of research from the witnesses that come before us.

Hon. Mrs. Smith: I will get the name of the group. They were the only group we could find with that kind of information available, it is true. Now we will put someone to work and they will use a lot of your money to try to get more information. I hope it is helpful to you.

Mr. Chairman: We are going to move on. Hopefully, if some of these things have already been answered, this will shorten the next two questioners, because we are now at 4:30. Mr. Pelissero.

Mr. Pelissero: Just briefly to the researcher, when she is doing her work in terms of 5,000 square feet, 2,400 square feet, 7,500 square feet and 10,000 square feet, would she also go back to Hansard in 1974 and 1975 and look at some of the logic or the reasoning that was presented at that time for why they went with four individuals, without any limitation on square footage? I think that is important as well.

We are reviewing, really, legislation that is now 23 years of age, whether it is dealing with the drugstore exemption or the tourist exemption, because in the last 23 years, as I think the member for London North (Mrs. Cunningham) has already stated, things have changed. I can now go into a convenience store of less than 2,400 square feet and do my mailing and my banking. It has an automatic banking machine in it. So I think if we are going to talk about relevance, I would like to put it in some kind of context.

The point that Mr. Philip raises is an excellent point, and certainly the committee will have to consider it. We may want to come back with a recommendation that says 2,400 square feet right across the board for convenience stores and drugstores. That is something that we, as a committee, are going to have to have some discussion on. If we are looking at what the objective and the purpose of the legislation is today, I think we have to put it in comparison as to the purpose and the objective of the legislation that said four employees and a tourist exemption.

Mr. Chairman: I am not sure that is what Mr. Philip asked the researcher to do.

Mr. Pelissero: No, the member for London North asked the question of the researcher on "adversely affect." My only point, and I think the member for London North hit on it at the end of her presentation, is that I can, and I have, walked into a convenience store where they offer postal services on Sunday and they also offer an automatic banking machine no bigger than what we knew in the good old days as a Coke machine, where you can get money out on a Sunday. That is all in under 2,400 square feet.

All I am saying is to review it in the light of the objectives and the purpose of what, to a degree, consumers want in terms of convenience compared to what it was 23 years ago in terms of 1975 legislation.

Mr. Chairman: OK, Susan?

Ms. Swift: I will attempt to do that.

Mr. Chairman: All right. Can we move on to the next section?

Hon. Mrs. Smith: Section 4 specifically refers to the local option, which as we all know is part of the bill, as it has been part of all these 100-odd local laws that have been made up until this time.

It is clearer, it is fairer and it is understandable because it is right out front there. This is for the municipality that has decided the provincial framework does not suit its local needs, for whatever reason. Tourism will obviously enter into many reasons, but cultural differences could enter into them. As a member said, it could be commercialism because they were sitting so close to an American city. I do not know. They might have local reasons for which they wish to adjust their law as did these 100-odd municipalities already.

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This is very specific and, at the same time, very all-inclusive:

"(4) A bylaw or regulation under this section,

"(a) may apply to any part or parts of the municipality or territory;

"(b) may limit the opening of retail business establishments on holidays to specific times or to a certain number of hours;

"(c) may permit the opening or require the closing of retail business establishments on certain holidays and not on others;

"(d) may restrict the opening of retail business establishments on holidays to specific periods of the year or require the closing of business establishments on holidays during specific periods of the year;

"(e) may classify retail business establishments by size, number of persons employed, character of business, geographic location or any other criteria."

I think this is very clearly set out. We know that for many communities tourism will be the reason they will take advantage of this, because that is one of the reasons so many municipalities have already done so. We know as well that many municipalities could not survive financially if they did not have the opportunity, which they had under the tourist exemption and will continue to have under this exemption, to continue to take themselves out of the provincial framework because it does not work for their community.

We recognize the importance of this right to the local municipalities and we put this right very clearly into the bill so that it is understandable. You will not have to do it for reasons other than you say. If a community wishes, under clause 4(4)(e) of this, to do it by virtue of tourism, it is permitted under that by character of business. A municipality can adjust the provincial framework in any way that suits its needs. I would point out that, having done so, the bylaw that is then in effect, which in most cases would be more likely to be opening stores than closing them, because our framework will be as closed as now or more so—forgetting drugstores, it will be the same degree of closedness as we have now, except for drugstores and roped-off stores.

So by and large, a bylaw would be a permissive one allowing more opening

rather than more closing as an exception to the provincial framework, and therefore should not really present any difficulty in bylaw enforcement for the municipality. Obviously, you do not have to enforce something that says you can be open, right? But if, perchance, a bylaw is passed by a municipality which is stricter than the provincial framework, then indeed the law is such that the money available in fines, which is considerably raised, would be available then to the municipalities for their enforcement efforts and would be payable to them for their bylaws. So the bylaw could be enforced by them if they write their own bylaw that is stricter. If, on the other hand, they loosen up their laws, they will not have a bylaw enforcement, because the only bylaw will be their exception to the provincial framework. The provincial framework will remain.

What we are proposing by way of allowing municipalities more say has been supported by some of our current mayors. I will give you a couple of quotes. This is from the reeve of Fenelon Falls, who says, "We see the proposed amendments as a strengthening of our authority to act in the best interests of our community and we applaud the stance of the government in continuing to acknowledge that the local grass-roots level of government is often in the best position to judge matters of this nature."

We have the mayor of Sault Ste. Marie, who said: "I will have to confess that my initial reaction was much like that taken by AMO and other mayors across the province: that it almost appeared to be a passing of the buck by the province. I will have to admit I have done a complete turnaround. We as municipalities have often said to senior levels, and to the provincial government most often, that we wanted a little more say in what happens in our own communities and we have done that in areas of planning, in areas of fiscal planning, in areas of planning generally, and here is the province saying to us, 'Here is an opportunity for you to decide what is right for Sault Ste. Marie without us in Toronto deciding what is right for not only Toronto but all the province.' So my position would now be that this is exactly the type of thing that we, from time to time, ask the province to permit us to do: make legislation that is tailored to our specific community."

The mayor of Kingston said, "I feel that some things that are good for Kingston may not be good for Toronto, and vice versa."

Mrs. Cunningham: Is the mayor in favour of this?

Hon. Mrs. Smith: Yes.

Mr. Keyes: I trained him well.

Mr. Pelissero: I think Ken Keyes is too good for Kingston.

Mrs. Cunningham: They are putting him on their brochures for the municipal elections.

Hon. Mrs. Smith: The mayor of Ottawa said, "It is better that municipalities be able to decide on their own rather than have a decision imposed on them by the province."

In the manual for the Association of Municipalities of Ontario, clause 1-3, "The Association of Municipalities of Ontario proposes that if the essence of our system of government is to keep government responsive to the wishes of the governed, municipal government should be left with as wide a scope of power as possible, and be independent in the exercise of that power to the fullest practicable extent." That is from AMO itself.

Mrs. Marland: Are you going to read the other letters now?

Hon. Mrs. Smith: That is it.

Mrs. Cunningham: Those may be the only four we hear.

Mr. Chairman: Whose question was that in response to?

Mr. Philip: She was just doing a leadoff on this section.

Mr. Chairman: All right. The next person I have is Mrs. Marland.

Mrs. Marland: I think it is just wonderful for the minister that she does have those letters, in view of the fact that there are about 823 municipalities in the province.

Hon. Mrs. Smith: One hundred and thirty of which have passed bylaws already.

Mr. Philip: But not bylaws endorsing your bill.

Mrs. Marland: I think it would be fair to read letters on both sides of the issue. However, I have two questions on this section. The first is: Why have you in this section chosen to oppose the wishes of the majority of the municipalities?

Hon. Mrs. Smith: The municipalities wish us to pass a law I believe is unenforceable, namely, to have a province-wide tourist definition, which we believe cannot be done in the courts. Anyhow, as a matter of interest, it is amazing how many of the municipalities do not even understand what is in this bill when you talk to the individuals, because they have read statements that do not reflect what is in the bill.

Mrs. Marland: I represent the ninth-largest city in Canada. The city of Mississauga has 400,000 people, and I think they would be rather insulted if it was suggested that their opposition to having a local option is because they did not understand the bill. I can speak very highly of the mayor, the members of council and the staff, and they oppose this bill, this section before us, because they understand very well what it is.

Hon. Mrs. Smith: I am sure the sophistication level in that group of people is very high. I am saying that across this province not everybody understands. I am not insulting the people. They have been exposed to a lot of "wide-open Sunday" quotes.

Mrs. Marland: Madam Minister, I will send Hansard to my council, because I think they will be very interested to read your comments.

In your opening statement, when referring to the local option, you were very careful to give wonderful support from three or four people in rural communities as to why—

Hon. Mrs. Smith: I will be glad to tell the mayor of Kingston you think it is a rural community.

Mrs. Marland: Excuse me. With respect, if you would wait until I finish, you would know the part of your statement to which I am referring. You have had a few days to go over your statement, which of course, we did not

have the advantage of until you presented it here today. In any case, the quotes that are made in here referring to why you were dismissing the fourth myth, I think it is—you are talking about the fact that the mayor of Clinton, John Balfour, said "There is not the same need to open on Sundays in rural Ontario as in lakefront towns like Goderich," and suggested that in effect—

Hon. Mrs. Smith: Yes, Goderich.

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Mrs. Marland: Excuse me, you gave those examples of why your legislation fulfils their needs. Then you go on to explain—

Mr. Chairman: Are you looking at the page? It is page 12, by the way.

Mrs. Marland: No, I am fine. I just read it, but thank you for your help.

You go on to explain that, as opposed to the rural communities, there still will not be a problem in communities which we would describe, I suppose, as the densely urban communities and large city centres. In dealing with the domino effect, you have the panacea of solution for that. You quote by suggesting that that will readily be addressed through regional governments.

My question to you is, how do you see it being addressed for a community like the city of Mississauga, which has the region of Peel as its regional municipality? It abuts side by side, in fact, with the same roads flowing back and forth, as you well know, with the municipality of Metropolitan Toronto.

Can you explain how the regional government jurisdictions can resolve the domino effect where you have two regional governments that are side by side and totally independent? If Metropolitan Toronto decides, through its regional government, to permit Etobicoke to be open, how will the domino effect not be the pressure on the region of Peel government, which is completely adjacent? I may add the chairman's own riding of Brampton is in the region of Peel also.

Mr. Chairman: A great riding.

Mrs. Marland: So I may be asking the question on behalf of the chairman. Who knows?

Hon. Mrs. Smith: Is this a question?

Mrs. Marland: Yes. How is that going to work?

Hon. Mrs. Smith: I have never been part of a regional government area myself. I know that you do abut very closely.

I do not think at this point you would propose that they all be one region because they are so close together. Maybe if they were starting from scratch they would make them one region. I do not know, for the reasons you say. But certainly I do not think in our bylaw we can write in that, for anything in the region of Peel, they have to have the approval of both Peel and Metropolitan Toronto.

I do not know what you are suggesting would be an improvement. Are you suggesting regional government should not be the area or are you suggesting that Peel should be dependent as well on a solution that is made in Toronto?

Mrs. Marland: I am simply asking you the question. You have made the statement that the problem of the domino effect will be resolved because the whole area that is susceptible to domino will be looked after through regional government.

That might well be if Mississauga were competing with Brampton and Brampton with Caledon in the north-south alignment in which that regional government exists. My question to you is, tell me how it works when two regional governments abut each other, as do the Metropolitan Toronto municipality and the regional municipality of Peel.

Hon. Mrs. Smith: If the will of these regions, which is my understanding, is not to go to "wide-open government" but to maintain as much as possible a common pause day, making exceptions for particular specific reasons such as cultural ones in Chinatown or other specific reasons, if that is their will, to try to live logically within the provincial framework adjusted somewhat to their local needs, I think it will probably work out.

If on the other hand either the region of Peel or Metropolitan Toronto would suddenly say, "We are going wide open," I would agree with you. Because they are in such close proximity, it would put an extra burden on the adjoining region to resist the problem.

Mrs. Marland: So you agree?

Hon. Mrs. Smith: I have said nowhere that there is never a domino effect. I can tell you that I have been to New York City and in a city like that the domino effect has not worked. They are open where they have a lot of tourists. A lot of New York City is closed where it does not have tourists, because that is the will of the people.

Mrs. Marland: So you would agree, now that I have outlined it for you, that your legislation does put particular pressure of the domino effect on the municipalities within the region of Peel which abut the municipalities within the region of Metropolitan Toronto? Therefore, you can understand why the city of Mississauga does not want the local option, because in fact it ends up that it is not a local option because their option is taken away from them on the pure competition basis. As soon as you give it to Metropolitan Toronto, which would be in the position to grant permission to be open to Etobicoke and North York, then—in other words, it does not work.

Hon. Mrs. Smith: You sound to me as if you are talking about two different nations, one of one culture and one of another. I think these are huge, sophisticated communities which will likely reflect the people who are in them. I think the people in those two regions are probably not that diverse in nature. I have been exposed quite heavily to the view that the people in these two sophisticated areas do wish to maintain a common pause day. If you have evidence that one of them is becoming completely different from the other, that is a different question. But I would see a common culture between the two adjoining regions.

Mr. Chairman: Before we go any further, I would like to inquire of the committee how late you wish to sit. Also, Minister— Maybe I should get the answer to the first question, how late you wish to sit, because we still have a ways to go.

Mrs. Cunningham: Until we are finished is what the Solicitor General said.

Mr. Chairman: All right.

Mr. Keyes: I would assume, though, Mr. Chairman, that you have had a meeting of the steering committee. One of the things I would like to see you do before tomorrow is decide the rules which run this committee. Are we going to use some reasonable time frames? Are we going to sit all night? We have tried to organize ourselves, I hope, a little bit better than that. I have just spent two weeks on a committee and we kept to a fairly reasonable time frame of operating every day.

Mr. Chairman: We have the time frames in terms of witnesses but I felt that this was an important part of going through it with the minister, that we have a bit more latitude. So we are prepared to sit until we are finished. That saves me asking the minister a second question as to whether she is available tomorrow, because it certainly appears as though with the questions and the number of people I have on the list, we are not moving very rapidly.

Hon. Mrs. Smith: I would remind the committee that at least the plan tomorrow is that the Minister of Labour (Mr. Sorbara) will be here.

Mr. Chairman: All right.

Mrs. Marland: I will yield to my colleague.

Mr. Chairman: No, Mr. Philip is next, then Mr. Chiarelli, then Mr. Pelissero and then Mrs. Cunningham.

Mr. Philip: I guess you would be in disagreement with the report of the economic development committee of the city of Toronto which states that the proposed amendments move in the opposite direction of allowing municipal discretion in permitting or prohibiting Sunday retailing.

"In urbanized southern and central Ontario, stores in different municipalities serve overlapping markets. Municipal councils preferring a limited approach to Sunday retailing risk placing their retailers at a competitive disadvantage relative to stores locating in neighbourhood jurisdictions with more permissive bylaws. Passing permissive Sunday shopping bylaws may become an economic development tool as municipalities seek ways of attracting new investments."

Do I take it you are in disagreement with that statement? -

Hon. Mrs. Smith: I would remind the member that under the local tourist option, the municipalities have had the availability to do this for many years. Most of them have not done so. In Niagara, you get some parts that are open; some that are not open. They seem to have accommodated their needs and they have had the local option all along, as you will see by the many laws they have passed. Mississauga, in particular, passed an interesting one we have often quoted in opening a particular fruit stand, which they supported with letters.

Mr. Chairman: That was Brampton.

Hon. Mrs. Smith: Oh, Brampton. Maybe there is one in both. But I believe they supported it with letters saying that these tourists—actually, it was a grocery store—were certainly enjoying our Ontario fruit. My only point is that the municipalities, particularly the more sophisticated ones,

have known for years that they can do what they want as far as local option is concerned. Under the fourth clause of the second bill, none of these terrible things has happened, so I do not see why you are quite so despairing for the future.

1650

Mr. Philip: Would you not agree that under the present act, the government can in fact overrule a municipality or take it to court if it frivolously declares itself a tourist area when it is not?

Hon. Mrs. Smith: This has not been done, and as I have said repeatedly, we are advised that the tourist exemption would not hold up in court, so we would be frivolous to spend the province's money to go to court when we believe it would not stand up in court.

Mr. Philip: Would you not agree then that it has been used as a vehicle to persuade certain municipalities not to try to use it frivolously, when they were not tourist areas, by calling themselves tourist areas?

Hon. Mrs. Smith: This was becoming more and more commonly done, and to allow it to be commonly done in an unfair way, rather than to be open and upfront about what is actually happening, is not my idea of writing a good law.

Mr. Philip: What studies can you table with us that you may have done on the British Columbia situation, in which there have been allegations from municipalities in British Columbia that in fact the domino theory did force municipalities to open up in exactly the same way as the city of Toronto economic development committee says may well happen in southern Ontario?

Mr. Chairman: I am not sure if that is contained in here, in this book, or not.

Mr. Philip: What studies have you done that deal with that?

Hon. Mrs. Smith: I think you are asking for opinions as much as studies, but we will make available to you the information we have from BC, if it is not in the book.

Mr. Chairman: There is a handout. I am sure you have that.

Mr. Philip: I have seen the handout and I do not see very much research from the ministry's point of view.

Hon. Mrs. Smith: Or if you wish to address the researchers as to whether they—

Mr. Philip: I am sorry, Minister, it is not the role of this committee's researcher to do your research for you. You are the one who introduced the bill. You should have done the research in advance of introducing the bill.

Hon. Mrs. Smith: We have studied the BC situation. We will table what information we have.

Mr. Chairman: I think the minister said she would make that information available.

Mr. Philip: OK, it will be interesting to see exactly what that information is.

Would you agree that under this section there are no criteria set out by which a municipality can decide whether or not it wishes to open up any or all establishments on Sunday? There are absolutely no criteria there.

Hon. Mrs. Smith: I have read you the section of the act that relates to that.

Mr. Philip: Right. Would you agree that under no section in the bill is there found any appeal mechanism, that someone whose business may be grievously injured as a result of a municipality's taking any kind of action with regard to store hours will have absolutely no recourse of appeal under your legislation?

Hon. Mrs. Smith: Their recourse will be to council and not to us and the discussion of council's methods—

Mr. Philip: But there will be no objective appeal to some body such as the Ontario Municipal Board or other quasi-judicial body.

Hon. Mrs. Smith: It is a local responsibility, so it would be a local appeal.

Mr. Philip: It is purely to the council?

Hon. Mrs. Smith: It would be a local bylaw.

Mr. Philip: In fact, then, the only appeal would be to ask a municipality, or a set of municipal councillors, to rescind the very legislation or the very bylaws that they passed?

Hon. Mrs. Smith: No, I think you are jumping from the provincial framework to your own bylaws. I would remind you that if you stay within the provincial framework, those laws are provincial law. When we finally work our way through to offences, you will find you can be charged and fined very heavily. You will find injunctive power and all that sort of thing for the provincial framework. That is in place and in fact it will be enforced by officers of law.

If you are talking about a bylaw which could be either making more tight or less tight the opening requirements within a municipality, then since it is a municipal bylaw, it will be to the municipality that the affected people will address themselves.

Mr. Philip: But under this bill, the very provincial framework you talk about can in fact be changed by the municipality.

Hon. Mrs. Smith: Only by bylaw.

Mr. Philip: You just agreed to that in the previous section, in which you said, "Yes, it will be possible for a municipality to pass a bylaw in fact saying that any store—

Hon. Mrs. Smith: Their bylaw.

Mr. Philip: "—up to 10,000, up to 100,000 square feet may remain open on Sunday."

Hon. Mrs. Smith: You just used the word yourself. They could pass a bylaw. The bylaw is theirs. The place that people will have to address that, because it is a local decision for the local business people, would be the local person who is in fact passing or not passing a bylaw.

Mr. Philip: Gosh, that is really taking provincial responsibility.

Hon. Mrs. Smith: Provincial responsibility in setting out the provincial framework becomes the law without the municipality—

Mr. Philip: What kind of framework do you have when you are passing all of your responsibility to the municipality? Where is the framework, as my colleague Mrs. Cunningham has asked you before and you failed to answer?

Hon. Mrs. Smith: The Alberta option would be taking no responsibility. If we simply said: "We now take no responsibility and have no law, you go and pass your laws," that is what they did in Alberta, and a lot of people in Alberta like it. That is an option that could be considered, and that is an option of the province taking no responsibility.

In our case, we have left employees a very strict provincial framework and the teeth to make that law work.

Mr. Chairman: Can we move on, Mr. Philip?

Mr. Chiarelli: I have a question, really for the committee and perhaps the committee researcher, and I am not looking for an answer today, I am just suggesting that the questions I am raising perhaps can be the subject of some discussion at other sessions. They deal with technical issues of municipal law, which I think are important for us to look at as a committee.

Mr. Chairman: I do not want to interrupt you, but I wonder if we could perhaps save that until the bitter end, because who knows, if you bring it up, it may become the subject of discussion right now.

Mr. Chiarelli: I am suggesting that some of the areas are technical municipal law and, hopefully, we would agree to await the results of some submission from the researcher to deal with it.

Hon. Mrs. Smith: You will be automatically waiving any decisions until you do clause by clause after you have received all the material and heard your—

Mr. Chairman: I certainly would invite those technical items, but the concern I have is that if you raise them now we may get into a discussion of them. If you would not mind holding it until the last thing, then we can certainly ask the researcher to do it.

Mr. Chiarelli: The areas I am looking at of a technical nature I think will require a little bit of time. What I can do is write a letter to you, Mr. Chairman, or the researcher, and indicate the nature of the research I would like.

Mr. Chairman: That would be most helpful.

Mr. Chiarelli: It is of a very technical legal nature, dealing with municipal law and how bylaws are dealt with under the law. The questions are

equally as relevant to the existing law as to the new law, but I think that people on the committee should address them.

Mr. Chairman: Perhaps if you would do that, then we can deal with that as a matter of housekeeping. Was there anything else other than that?

Mr. Chiarelli: No, that is the only thing.

Mr. Chairman: Mr. Pellissero? Or—sorry; I beg your pardon.

Mr. Pelissero: I will stand down.

Mr. Chairman: You are standing down? I was going to go to Mrs. Cunningham anyway, as a matter of fairness.

Mrs. Cunningham: My comments have to do with what I think the intent of section 4 is. After reading section 4 and looking at what is described as explanatory notes, I would have to go on record as stating that this government is not in fact in favour of the principle of a common pause day in Ontario and that individual municipalities may or may not be in favour of a common pause day in Ontario, but with section 4 that principle no longer exists for this government.

If you take a look at the beginning of the wording under municipal powers, "Despite sections 2 and 3," all of the decision-making is therefore sent back to the municipalities. You can talk about part or parts of municipalities; you can talk about one or more retail business establishments; you can talk about specific times; you can talk about opening; you can talk about closing; whatever you want. There is not one municipality that will not be facing this legislation within the next year in one way or another. Somebody will have to go to the municipality and say: "That legislation closed me," i.e. the drug store, or "I want to be open."

Mr. Chairman: Is that a question for the minister? Perhaps she could respond to that.

Mrs. Cunningham: Yes, she can respond to my remarks. If you want me to put it in the form of a question, my question would be, is my interpretation correct?

I would now state, to the minister, that is, giving her the end of it, Kanter—listen to the end. It is worse than the beginning.

1700

Mr. Kanter: I am just wondering if it is still going to be a question, that is all.

Mrs. Cunningham: It takes a long time when you correct me. Mr. Chairman, we are going to have to start at the beginning again and then we will stay longer, so maybe over the period of the next eight weeks we will learn not to.

But the point is that every municipality will be coming forth for some definition. Businesses in municipalities will be going to their municipalities to ask to be open or to close.

When I was elected to this Legislature I thought, maybe, somehow I could

help with the efficiency of government. To me this is the most blatantly inefficient act that anybody could imagine because, number one, nobody wants it and number two, it is totally unnecessary.

I would say given the response that the minister had to the previous question, and that is about what is the tourist region, nobody tested it, nobody asked the municipalities to come forth with definitions. No one, obviously, asked the Ontario organization to come forth with definitions to help us with what was really the problem.

Now what we have got are ongoing, bureaucratic red tape laws that are not necessary and a whole lot of money that is going to be paid by the taxpayers of the municipality and of this province and, you know what, our kids.

What I thought when I was elected was that I could make things easier and I could make things more understandable and I would have some impact on whether or not it was going to cost more to govern. I will not have any impact because already the minister has stated in the press—and I was disappointed to read this—that the existing situation is in force, something about how it will not matter what happens.

We are going to make some real impact to change this legislation. I am just wondering about how well we are spending our time because of that drugstore thing. We do not need that clause.

Mr. Chairman: I appreciate that but I get the feeling that we are summing up here without having ever heard any of the witnesses who are going to come before us.

Mrs. Cunningham: Let me tell you something. Section 4 sums it up for me. We have all had the letters from across the province. We know who is coming to make presentations to the committees and we know what they are going to say. They are going to say they do not like section 4. We now are being told that we are going to buy it anyway.

Mr. Pelissero: I am no longer standing down.

Mr. Chairman: I am sorry. We will now have Mr. Kanter. You are back on the list, but you can go after Mr. Kanter.

Mr. Pelissero: OK. Fair ball.

Mr. Kanter: Just a question. As I understand section 4, a municipality can by bylaw permit any retail business establishment to be open. I am wondering if there is any process or procedure that a municipality might have to follow before passing a Sunday opening bylaw in terms of notice or public meeting or something along the lines of the Planning Act, for example.

Hon. Mrs. Smith: I have discussed this with my own ministry people. They point out that under the present situation in the setting of hours, and all other laws related to retail and commercial shops and this sort of thing, the process is not set out by the province. Indeed, the process is set out by the local government.

From their point of view they felt that this was the more appropriate way to do it because local governments can be so different. They can be big sophisticated cities or small towns and so forth. This was the opinion of the

people in my ministry whose advice was that and I pass that on to you.

However, at the same time, I have not in a direct sense but in an indirect sense, by telephone call to Ms. Brick, the president of the Association of Municipalities of Ontario, pointed out to her that there is no process at present envisioned in the law.

I told her the reasons for which there is no process presently in the law but suggested to her that if AMO wished to share with us its views on this, I hoped that it would do so rather than missing the opportunity when it comes before you, of addressing this very problem.

Certainly, we are trying to accommodate the needs of the municipalities, but after the impassioned speech of the member for London North about laws being too complicated and too demanding and how we complicate everybody's life, I do not want to recommend on my own a process for all the municipalities that may only be needed in a small minority of the larger ones, and that would be quite inappropriate and just create a lot of confusion in smaller municipalities.

I look forward to the presentation from the Association of Municipalities of Ontario on this matter. If a process is deemed advisable universally—I keep "universally" in mind and I remind you of the impassioned speech from the member for London North—I do not want to do unnecessary lawmaking here, but if it is deemed to be universally advisable for the province, then make that recommendation.

Mr. Chairman: We passed by you, Mr. Hampton, but I am going to come back to you. Mr. Pelissero.

Mr. Pelissero: "I do not think...anything could be more flexible than to meet the great requirements and the varying conditions...in this province...it is strictly democratic; the matter is placed in the hands of the people themselves and in the absolute control of their elected councils. There is nothing 'wide open' about this act. It does nothing to induce any community to change its pattern of life. It enables the people to settle their own affairs in their own way."

That is not Harry Pelissero's quote, not Joan Smith's quote and not Ian Scott's quote, but Premier Leslie Frost's quote during the 1950 debate on amendments to the Lord's Day (Ontario) Act.

On the question of the domino effect, putting it in the hands of the local municipality, I do not think Metropolitan Toronto is feeling any great pressure because Mississauga and the regional municipality of Peel have allowed Port Credit, the airport strip and, certainly, even one illegal Longo's Fruit Market in the city of Mississauga to be open. I do not think they are feeling any great pressure. Maybe the minister could confirm or deny whether Metropolitan Toronto is feeling pressure from either the city of Mississauga or the regional municipality of Peel because of decisions the city of Mississauga has taken under its own advisement.

Mrs. Cunningham: Frost was talking about Sunday baseball when he made that speech.

Mr. Pelissero: Right. That's what he said.

Mr. Kanter: And the opponents predicted all kinds of dire consequences.

Mrs. Cunningham: That is one I am very familiar with.

Mr. Chairman: Let's not throw another ball into the ball park. Let's deal with the one we have. Mr. Hampton, and then we are going to move on.

Mr. Hampton: I want to go back to the beginning a bit. The minister is saying that all the government is doing in this legislation and specifically in the sections you have just quoted to us is fine-tuning the local option.

Hon. Mrs. Smith: We are recognizing the local option.

Mr. Hampton: You are recognizing the local option that was always there.

Hon. Mrs. Smith: It has been demonstrated to be always there.

Mr. Hampton: OK. So there was a local option there before and now you are just enlarging that local option.

Hon. Mrs. Smith: It was there implicitly because the tourist exemption which was the local option was not enforceable as a tourist exemption; it was enforceable as a local option only.

Mr. Hampton: And what you are doing does not involve any fundamental change?

Hon. Mrs. Smith: If the municipalities involved wish to change the nature of their municipality in a substantial way, as Sault Ste. Marie has for a year to see how much it changes—I think we have talked about it. I am not saying these changes change the whole nature of the community, believe me, but a place like Sault Ste. Marie, as far as its commerce goes, has decided under the tourist exemption to make a substantial change for a year.

Mr. Hampton: I am talking about the policy priorities of this government. This legislation does not, in effect, mean that the government is placing its policy priorities in a different area.

Hon. Mrs. Smith: I do not want to object but it seems to me that we are, as Mr. Hampton suggested, going back to the beginning. I think I have covered this quite thoroughly, but maybe you have a specific question I have not covered.

Mr. Hampton: I guess I will have to accept your first answer that there was the local option before and now this is just to simply—

Hon. Mrs. Smith: It is making it more honest because it is recognizing the existence of—

Mr. Hampton: There is nothing more to it than that?

Hon. Mrs. Smith: The municipalities had the power to do as they wished in this territory anyhow, under the tourist exemption. They had the power to do it and have done so.

1710

Mr. Hampton: The people who have been fairly critical about what you are doing here have written a criticism of the legislation dealing specifically with the sections of the act that you have just read. I want to go through them with you.

Basically, the opinion of the Coalition Against Open Sunday Shopping is that it feels that under Bill 113, a councillor, without warning, could introduce a motion at a council meeting one night to pass a bylaw to create or amend an open designation, with little or no debate. Do you agree that it could be at a regular council meeting?

Hon. Mrs. Smith: I know it could not happen in London. I have already raised this point with the head of the Association of Municipalities of Ontario for her advisement.

Mr. Hampton: So it could not happen in London.

Hon. Mrs. Smith: I do not think London could present a bylaw like that and not have it referred to an open committee meeting, because London has a very firmly entrenched committee process in place. By referring it to a committee, that in effect would provide notice, and it would also provide public hearings.

Mr. Hampton: You would agree that there is nothing in this legislation that sets out the specific procedures to be followed in terms of how a Sunday opening bylaw is to be proposed, how it is to be reviewed or who it is to be reviewed by. There is nothing in this.

Hon. Mrs. Smith: People drop in and out of here quite a bit. I just went through this whole thing. I do not know if you were out of the room, but I went through this whole thing of process. You might get Hansard.

Mr. Hampton: OK; that is good. I guess what I find puzzling is this: On some other important matters, such as zoning bylaws, liquor permit notification, etc., there is a well spelled-out procedure that says "placement of the motion on the council agenda," etc. There are a fair number of checks and balances required under provincial law. Is that not true?

Hon. Mrs. Smith: I have already said this in your absence. I pointed out that under the Planning Act, matters relative to planning have certain requirements set out, but retail business has never been considered part of those sorts of Planning Act processes. I have advised Ms. Brick that this is a fact. As the act now stands, it is being regarded like other retail laws and does not have a process in place. It would be a radical change to have a process for a commercial law, but it may be something. I hope that if AMO wishes to address us on this, it will do so. I have suggested to it that it might.

There was another point you made. The liquor laws do not go to council at all. Another committee considers the liquor laws. I am not really all that versed on the checks and balances, because I have never actually gone and applied for a liquor permit, although I am not implying I have never been to a party where one was applied for.

Mr. Hampton: My point was that an application for a liquor permit requires notification of other similar businesses in the area.

Hon. Mrs. Smith: As I say, I am not an authority on the liquor permit situation.

The Acting Chairman (Mr. Keyes): That is a process totally outside the municipal jurisdiction.

Hon. Mrs. Smith: This bill specifies that liquor is removed from it.

Mr. Hampton: That is not my concern. My concern is that we treat some of these matters relatively seriously.

Hon. Mrs. Smith: I have treated them seriously and I have recommended to the committee—I recommend you read Hansard—that it consider this seriously, that it consider both the advantages and the disadvantages of it, and that it listen closely to AMO when it comes forward. I hope they do come forward with anything they have to say.

I pointed out to the committee at that point that the kind of process that might be appropriate for Mississauga and Toronto, for big metropolitan areas, might be very inappropriate for a small community. It may in fact be difficult to write a universal law on that. If AMO has something to say on this, I indeed initiated the discussion.

Mr. Hampton: But as the law exists now, there is nothing—as of today's law.

Hon. Mrs. Smith: I await advice from AMO on this. I do not propose to put it in without their advice. Maybe you would propose to the committee that we do it regardless, but I do not.

Mr. Hampton: But essentially as it stands, and I assume this question was asked before, a simple motion to a municipal council can create an open designation, can change the hours of Sunday or holiday shopping, can change for one time or for all time whether or not retail employers and employees in a municipality can celebrate Christmas Day, Boxing Day, Good Friday, etc. That can all be done by local option now.

Hon. Mrs. Smith: It could not be done in every community without a certain process, depending on what the community has put in by way of process. As I pointed out when it came up, it could not be done in London without being referred to a committee, which would be a public committee.

Mr. Chairman: I think in your absence the minister went through the process. AMO would be approached with reference to some suggestion as to process, but it would have to be universal to be acceptable. That is what I gathered.

Mr. Hampton: OK. That was worth reiterating. I have a couple of questions to follow from that, though.

Mr. Chairman: Can I take that as two?

Mr. Hampton: Yes. The Attorney General (Mr. Scott), when he was defending the Retail Business Holidays Act, noted in his factum that when the Retail Business Holidays Act was drafted, it paid particular attention to some

recommendations the Ontario Law Reform Commission had made. The law reform commission recommended the enactment of a provision allowing the designation of portions of regions and so on, in terms of the municipal option. The factum said:

"Such a designation would exempt the area from any Sunday closing law for the duration of a stipulated season. Areas should be selected in order to accommodate high seasonal or geographically concentrated demands by tourists for goods and services related to recreational needs. This power was to be used sparingly, naming only classes of businesses for certain seasons. This exemption is in keeping with the purpose of providing a quality common pause day with recreational opportunities for family enjoyment."

That is what the Attorney General said in defending the existing legislation, the existing law. That is what he said the intent was behind it. Do you agree with that?

Hon. Mrs. Smith: That is reflected in the provincial framework; therefore, the provincial framework does reflect that.

Mr. Hampton: Yes, but the fact of the matter is that everything else there essentially makes a common pause day something that is open to almost any whim.

Hon. Mrs. Smith: If you call local government a whim.

Mr. Hampton: I do not call it a whim.

Hon. Mrs. Smith: Well, that is what it is open to.

Mr. Hampton: Those words are yours.

Hon. Mrs. Smith: You said, "Open to any whim." The words were yours.

Mr. Hampton: The reference to local government was yours.

Hon. Mrs. Smith: The provincial framework is in place unless the local government changes it, and local governments have the power to change it for their needs. I do not know where the whim comes from, if not the local government. If you cannot change the provincial framework as it stands, as a provincial law, you can change it within your community by the local government, which will do it by design and with care to look after the needs of its community.

Mr. Hampton: I want to ask you about a quote that appears in the Sunday Star.

Mr. Chairman: Is this number two?

Mr. Hampton: Yes, and also a comment that is made. It says, "Indeed, Solicitor General Joan Smith says the legislation's local option clause is strictly non-negotiable, regardless of what the all-party legislative justice committee decides."

Hon. Mrs. Smith: You have a choice. If you do not have any local option, and we have said tourism will not work in the courts, then what are you suggesting? We could put in place the provincial framework and say there are no exceptions, that nobody in this province can move outside the

provincial framework. It takes us back a lot of years, but we could have said that the provincial framework, which includes a very strong common pause day, has Sunday listed, etc. We could have said from now on this will be the law of the land.

This would have brought great displeasure from the 130 communities that have already made changes in it, to those places that are dependent on something different from that framework. We made the framework strict to try to reflect the general need, but in order to make it strict to reflect the general need, you also have to make room for people to move outside it or you do irreparable damage to particular instances and places, small communities, rural communities, that get tourists in, but not just that.

Sault Ste. Marie has made its own. You can go through the list of the places that have found a reason for themselves to do otherwise. In order to leave in place a framework, which indeed is a Sunday pause day, a common pause day framework, we had to allow for local option. That is why I said then, and believe, that it is too late in history and is not the desire of this province to go way back and say, "Nothing in this store will open in any way except the things in the provincial framework." I do not think you want to do that.

1720

Mr. Hampton: If I can just comment on your answer, going way back to the all-party select committee's recommendations, is that so far—

Hon. Mrs. Smith: You would be going back prior to 1975.

Mr. Hampton: Is that so far back?

Hon. Mrs. Smith: No; prior to 1975. The select committee recommendations were not law; they were recommendations of a committee.

Mr. Hampton: If you read the factum the Attorney General put together a couple of years ago to defend the existing legislation—

Hon. Mrs. Smith: It is reflected in the provincial framework.

Mr. Hampton: —it is pretty clear they regarded a common pause day to be above and beyond the importance of the tourism option.

Hon. Mrs. Smith: It is reflected—

Mr. Hampton: I would say the legislation you are bringing forward now pretty clearly puts the tourism option above and beyond the local pause, and that is a fundamental change in the policy of the government.

Hon. Mrs. Smith: I cannot believe and I am surprised to hear, although I should say you could seriously consider it, going back to pre-1975 and no exemptions at all. I do not think the Attorney General—I have not read the whole thing and you have had researchers do it for you, but I would not say that he put one above the other; he referred to them both. I cannot sit here and say what he put above another.

We clearly have put in here a common pause day provincial framework. With that, as they have for years and years, we reflect the diversity of this province and the need for exceptions. You could not make that provincial structure rigid without doing tremendous—you would find a lot of different

people appearing before this committee if you ever said we are making the provincial framework solid law and everybody is closing down who is now operating under one of these exemptions.

Mr. Chairman: We will move on to section 5, as I record the next section.

Hon. Mrs. Smith: Section 5 is the replacement of what was referred to as the Sabbatarian exemption. It is indeed a fairer, more even-handed approach to what was decided in the Sabbatarian exemption in the law case that you were referring to.

In putting together the original bill, which we have as law now, there was a recognition in it that some large groups in our community, probably primarily the Jewish community and the Seventh-Day Adventists, observed very strict religious holidays on Saturday rather than on Sunday. Therefore, you had in that law a clause that said basically, "If you close on Saturday, you can open on Sunday." That was a recognition of a religious right of those people.

We recognize that was correctly done. Indeed, the Supreme Court of Canada recognized that without that clause the whole bill would have been offending the Charter of Rights, but it did indeed say that because of this clause it was not offending it.

We have taken what was a recognition of the religious rights of some in society, giving them some recognition, to a further degree of fairness; namely, we have said that in this society of ours, if a store closes down on the day of religious observation of the owner, then it can open on Sunday. We have taken out the clauses that restricted the size or the number of employees that could be used by that store, because if you recognize what is there for a small store—that because it closed on Saturday, therefore, it can open on Sunday—then why not do the same for someone who owns a big store and maybe serves largely a clientele of that religious persuasion? If they close their big store for all of Saturday, then why should they not be open all of Sunday?

It is an evening out. It is saying: "We'll treat you the same. We'll give you a fair recognition of your closure and the evenness of letting you open that same store, whether it was big or whether it was small." It must be done to avoid the kind of abuses we saw this Boxing Day and the discussion that got going then around, "If you close Saturday, you can open Sunday," which of course was not the intention of the law. It must be done year-round and it must be consistent through all—as Mr. Philip was asking earlier—of the businesses owned by that person, all the affiliates, all the branches of it.

On the one hand, it extended the right which was already recognized in the present act. On the other hand, it also looked at the fact, as we all know, that Ontario now has several cultures, several groups. Indeed, we do not have primarily an Anglo-Saxon/Catholic/Jewish society with the various Anglo-Saxon-type religions; then we did have, as I say, Dutch Adventists, who were a considerable force at that time. Now we have many religions that are a considerable group within our community.

I would point out to you that the case that ruled on Edwards Books and Art was presented only with the question of the fairness of the closing of Edwards Books. They were dealing only with this man's religion and the fairness in this law. If, in fact, you took that decision and seemed to apply

it to a business of a totally different religion, be it Buddhist or something else, if they came as an individual store and said, "I was closed down all day Friday and I think I ought to be allowed to open on the common pause day," we believe the rationale that went into that first circumstance—"I closed Saturday; therefore, I can open on Sunday"—would inevitably and should be applied to other groups whose religious day is not Saturday, but indeed may be some other day of the week.

We recognize that to be fair to all religious groups they must all be treated the same. Therefore, rather than naming Saturday versus Sunday, we have said that if, for the religion of the owner, the store closes on a given day other than Sunday, then indeed it can open on Sunday. We think this is being fair.

Mr. Philip: I find it astounding that the minister would so try to confuse the issue as to use the Edwards Books issue as a religious argument to support the change in this section. Edwards Books had nothing to do with religion. I did not personally know that Mr. Edwards had a religion other than Christian. I am sure that for a majority of people who supported that bill in the Legislature, the issue of Mr. Edwards's religion never arose.

What arose in the Edwards Books issue, and indeed it was raised by the opposition and not by the government, was whether the sale of books was a legitimate recreation activity in the same way as renting videotapes or any other form of recreation and in fact whether books were being sold on Sunday by people other than those in the occupation of running bookstores.

It also centred on the fact that the employees of Edwards Books and other bookstores asked to be open on Sunday and were not opposing that change as are a majority of employees across this province who are employed in the retail industry. To suggest that Edwards Books somehow was a justification for this is the grossest form of distortion.

Hon. Mrs. Smith: I accept your correction on that. Actually, the rationale that was coming was out of the Supreme Court case but not Edwards Books.

Mr. Philip: I recall your arguments on the Supreme Court decision. In fact, your arguments were that we were different from Alberta, that in fact what we were dealing with was not a religious holiday but rather the concept of a common pause day. That was an argument which you made very strenuously to Mr. Shymko, who was presenting the Seventh-Day Adventists' argument to the committee.

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I recall that in Windsor you expressed great agreement with a man of Jewish persuasion, a shoe store operator, who happened to have 17 employees, as I recall it, and who argued that he did not know the religious persuasion of the employees. He could summarize that probably they reflected the population of Windsor as a whole, and therefore a majority of them would be people who would have, by their tradition, a common pause day of Sunday rather than Saturday, but it would be contrary to the Human Rights Code, indeed, for him to ask their religion.

While he agreed that in small stores such as kosher or Muslim meat shops there were reasons, and indeed under the Human Rights Code you may discriminate in those cases in the hiring of people to work in those kinds of

things, it would be a great imposition on him to be asked or to be given the option to simply close on Saturday because he happened to be Jewish. You agreed with that.

I guess one has to wonder why there is the sudden conversion from a position that you were so hawkish on. Indeed, as I recall, you were the most hawkish of any of the members on the committee in Kingston, when there was the presentation from the Seventh-Day Adventists, supported by certain members of the Conservative Party. You were the most hawkish on the committee in arguing against that.

I do have a specific question, though, with regard to—

Hon. Mrs. Smith: Could I just answer briefly what was implied in that question, before you go on to whatever question you have?

Mr. Philip: Sure.

Hon. Mrs. Smith: I did indeed find out that the bill that is in existence now would have been declared contrary to the Human Rights Code—and this was the case I should have been looking at—had it not had in the Sabbatarian exemption. So while we have recognized a common pause day, it has come to us out of a Christian tradition, which I have said.

The Supreme Court ruled—and far be it from me to question the Supreme Court—that because the Sabbatarian exemption was in that bill, it did not run contrary to the Human Rights Code. The only dissenting vote on that was a vote saying that they thought, as we have done, we should take out the size and staffing limitations. That is a Supreme Court ruling.

Having said that the Sabbatarian exemption had to be there, we are suggesting you add more fairness and a greater reality of where Ontario is today by recognizing those who celebrate their religious day, as opposed to a pause day, on a day other than Sunday. They should be recognized along with those who declared on Saturday. The Supreme Court has said that to keep the law that presently exists in line with the Human Rights Code, so it is an extension of that thinking. What is right for the people who celebrate their religious holiday on Saturday is also right for the people who celebrate it on other days.

Mr. Philip: That is an amazing interpretation of the Supreme Court decision. Are you suggesting, amid that very long answer—and maybe you can give me a short answer of yes or no—that the present act, with its exemption over a certain number of employees, or if you want to reverse it, under a certain number of employees, would in fact be contrary to the Human Rights Code of Ontario?

Hon. Mrs. Smith: I believe that is presently before the courts.

Mr. Philip: So you do not have a decision on that.

Hon. Mrs. Smith: No. We think it is the fair thing to do politically. We think we should recognize this ourselves. We do recognize it. I personally support the dissenting opinion that said that. I do not think it was dissenting from the point of view that other people did not agree with it. It was more a question that this was not really what was being asked.

Mr. Philip: You certainly did not support the dissenting opinion at the time you argued so strenuously against it six months ago.

Hon. Mrs. Smith: I am not about to try to take on every little quote that you think you have given accurately or not accurately, whether it is in or out of context, from the hearings that went on six months ago, because what you have in front of you is the bill that we should be looking at now in the light of the arguments that are being put forward now and the situation that now exists.

If your interest here is only to try to point out what an idiot I am or something like that, that may be very interesting to the committee, but it will not resolve anything in the bill. I suggest you deal with the bill and not with personality quirks.

Mr. Philip: I am sorry if you think that a government that promises one thing in an election and does something exactly opposite—

Hon. Mrs. Smith: I was not the government. You are quoting me.

Mr. Philip: —and a minister who says one thing before an election, and indeed signs her name to it, and brings in legislation exactly the opposite without any consultation, if you think it is simply playing politics to point that out and to ask the questions my constituents are asking, and indeed your constituents are probably asking, with the exception of the Libertarian Party that you argued so strongly against when it was making the arguments you are now in favour of, I am sorry. I would be embarrassed if I were in your shoes trying to defend this bill and trying to defend this flip-flop, but do not call it politics when you play politics and we simply call the fact that you are.

Hon. Mrs. Smith: If I were bringing in an Alberta law, that would be the flip-flop. I am bringing in a provincial framework that is stricter than what you now have, and that is what we are talking about.

Mr. Hampton: This is even worse, because it pretends to be something it is not.

Mr. Philip: You said it is before the Supreme Court now. Do I take it that your government is defending the position of the present legislation against it being contrary to the—

Hon. Mrs. Smith: I do not think it has been called. I would have to get information on that. In any case, that becomes irrelevant, because we are now putting this forward. As I already said to you, we are doing this in recognition of the human rights charter; this one we are doing because we believe it. Regardless of what the court decides, we believe it to be fair.

Mr. Philip: You are also saying that if you do not, it is going to be thrown out in court.

Hon. Mrs. Smith: No, I did not.

Mr. Philip: You said it would be contrary to the charter; you said it would be contrary to the Human Rights Code.

Hon. Mrs. Smith: The courts will decide what is or is not.

To clarify, the court said that had we not had the Sabbatarian exemption in, the old bill would have been contrary to the law. That is all they said, that I know. They did not enlarge on any of these other things. The other

things are things I am saying our bill adds. We think it is open, we think it is fair, we think it is recognizing the multiculturalism of our society. The Supreme Court ruled only on the one thing.

Mr. Philip: The minister is saying several things, and I want to get the contradictions clarified.

Mr. Chairman: Just let me intervene for a second. If you are asking her for a legal opinion, I think that is unfair.

Hon. Mrs. Smith: That is right.

Mr. Philip: I am asking her to justify the opinion that she, as minister, is saying—

Hon. Mrs. Smith: I think it is fair.

Mr. Philip: Now we have three different opinions that she is saying. One is that it is contrary to some law, either to the Human Rights Code or to the Charter of Rights. Now I take it that you are not saying that, is that correct?

Hon. Mrs. Smith: I am saying that the Supreme Court of Canada ruled that our present bill would have been contrary to the Charter of Rights had it not had in the Sabbatarian exemption.

Mr. Philip: I understand that. I read the argument.

Hon. Mrs. Smith: That is what I am saying.

Mr. Philip: So you are not saying then, as you said earlier, that the present legislation is contrary to the Charter of Rights or contrary to the Human Rights Code?

Hon. Mrs. Smith: Of course I am not saying that or it would not be there. It would be struck down.

Mr. Philip: You did it a few minutes ago.

Hon. Mrs. Smith: You may have managed to interpret something I said that way—I may even have somehow worded something incorrectly—but it is obvious to anyone in the room that if the Supreme Court had ruled it illegal, it would no longer be on the books.

Mr. Philip: We will easily check the record.

Hon. Mrs. Smith: Sure. As I say, if I said something slightly wrong, it was not my intention, nor would there be anybody here thinking it was my intention to say that, because it would be clearly no longer the law. You have heard of the abortion law being struck down. You should be aware of what happens when the Supreme Court strikes down a bill.

Mr. Philip: I have one question on clause 5(2)(b) of your amendment. It says, "In the case of a partnership, the religion named in a written agreement between the partners which is the religion of one of the partners."

Do I take it that a partner could in fact have very little equity in the company or very little ownership in the company, that he could have a very

minority interest and still, under your amendment, the religion could be declared the religion of that minority partner? In other words, I could own a major share in a company, along with a bunch of other people, and bring you in for a \$5—

Hon. Mrs. Smith: A major share is not a partnership.

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Mr. Philip: I could own a major portion.

Hon. Mrs. Smith: You could be a partner.

Mr. Philip: I could be a partner with a major investment, as compared to you, who were brought in at any time with a \$5 investment or a \$100 investment in a multimillion-dollar company. You would still be a partner. In this case then, the partner who would be named then could in fact be the person who had very little financial investment in that company.

Hon. Mrs. Smith: I believe that would be thrown out by the courts as a sham. I think you would find, if you have people with experience of business cases like that, it would be an obvious sham. I do not think multimillion-dollar corporations are going to write partnerships like that. You are asking about a clause that deals only with a partnership, and I do not think they would write a clause like that. I think the whole argument is like angels dancing on the head of a pin.

Mr. Philip: What statute can you point to that would require the disclosure of the investment or indeed even of the names of any of the partners in a private corporation?

Mr. Chairman: Partnership registration.

Hon. Mrs. Smith: Partnership registration, if you are going to use it as a reason to change the law.

Mr. Philip: If you registered it?

Hon. Mrs. Smith: To take advantage of a law that says it has to be the named religion of the owner, then it has to be the named religion of the owner. You do not have to name your religion, but if you want to take advantage of this clause and this law, I believe you would have to.

Mr. Philip: There is nothing, though, in that registration that says I have to disclose what investment any one of the partners has made in that company.

Hon. Mrs. Smith: I think you are creating, as I say, an angels-on-the-head-of-a-pin thing here. We have tried to make the law so that even for those who open on another day for religious reasons—you have to have some faith in people and democracy—even if they do that, then they have to be closed on Sunday; and they have to do it year round, they cannot do it sporadically, opening on one day in Christmas season and on another day some other time.

That whole partnership will be bound and anything it is associated with will be bound by that same regulation: close that day, then you can open Sunday. It is about as far as you can make something perfectly fair. If you do

something obviously in the way of a sham to try to trip up the law, I assume the courts will look at it. I do not think I can do it here in a bill.

Mr. Philip: Only six months ago you called that so-called sham a checkerboard that you said could be done, that you were concerned about, and that was why you argued in the presence of the Seventh-Day Adventists in Kingston against any such change. Now, you have obviously changed your mind.

Hon. Mrs. Smith: I have read the human rights ruling. I have done a lot of studying of this. I would like to say that yes, I am a lot more informed on this whole issue than I was at that time.

Mr. Philip: Where are the human rights of the majority of employees who may be used to having Sunday off when the owner of the company, or maybe even a minority shareholder or partner, decides that it is going to stay open on Saturday rather than Sunday? Where are the rights of those people?

Hon. Mrs. Smith: If a store is known to have declared itself by partnership or by public declaration of a certain religion, then the person will have to take that into consideration when seeking employment.

Mr. Philip: That is really great if you have worked for the company for 25 years.

Mrs. Cunningham: With section 5, where would the owner of a franchise fit in under that section? Where would the definition be for that person, that franchise owner?

Mr. Chairman: Sole proprietorship, I would think.

Mrs. Cunningham: It would not have anything to do with the rules of the franchise?

Mr. Chairman: The franchisee is simply a sole proprietor.

Mrs. Cunningham: Is that your interpretation too?

Hon. Mrs. Smith: I certainly would bow to a lawyer.

Mr. Chairman: I would never bow to a lawyer. I would bow to a judge, but not to a lawyer.

Mrs. Cunningham: That is not a question anybody is going to take under advisement?

Hon. Mrs. Smith: Certainly, we can take it under advisement.

Mrs. Cunningham: I think in time it will come up.

Hon. Mrs. Smith: I am not going to try to answer technical legal questions.

Mrs. Cunningham: I would not expect you to. That is why I added my remarks.

Mr. Chairman: That is why I should have kept my mouth shut.

Mrs. Cunningham: No, I am not saying that. I bet you are right, but

the point is you probably will get it. I am just raising it as a question that we should have an answer to under certain circumstances down the road.

Hon. Mrs. Smith: Sure, I agree. I might say, as a matter of interest for all of you, that the technicality of the way this is written is taken from the same sort of rulings with the Loan and Trust Corporations Act; that is the framework we use. So I went outside my own area of expertise in the structuring of this, and I will be glad to get someone from the Ministry of Financial Institutions to attend on your committee at some time to answer the highly technical questions about the corporations acts, because they are very technical.

Mr. Chairman: Mr. Hampton, can we move on to the next item, which is section 5a? I cannot believe there would be any questions on that. It is pretty clear.

Hon. Mrs. Smith: The only comment I would make on this one, Mr. Chairman—I forgot to make this comment on the last one, so I would like to make the comment on both of these sections, the religious and the lessor-lessee regulation—is that they are provincial law; the municipality cannot opt out of those. I just say that for your information.

Mr. Chairman: OK. Am I clear on this that if a lease in a shopping plaza required a store owner to stay open by terms of that lease and any future leases, that clause would not be operative and it could not be changed by anybody other than the province?

Hon. Mrs. Smith: That is right, the law is a provincial law. So this will protect lessees in malls, both ones that have presently signed contracts and ones that will sign them in the future, so that they cannot be forced to open on Sunday.

Mr. Chairman: Any questions on that or can we move on to section 6?

Mr. Hampton: What about a situation where someone has a lease with a mall owner, and let's assume it has the clause in it that you are talking about, the clause saying that there is no effect even if it is in the lease—either situation. There is a clause saying, "You are out if you do not open on Sunday"; so I accept your section 5a, which says that is no longer of force or effect. Then there is the store that is located in the mall. The lease is up and he wants to renew the lease. Then the owner of the mall quietly says to the store owner: "Well, I really wanted you to stay open on Sunday and I guess I will find somebody to occupy that space who will."

Hon. Mrs. Smith: I recognize that, unless we want to get into some radical new forms of control that we are not into and that sort of thing, there is nothing in existence in commercial rental agreements that can force a renter to rent beyond the time of the lease. To introduce anything like that would be very complicated.

As far as we could judge, the chief reason that a mall owner might have for not renewing a lease would primarily be that person is not bringing in—this is what I gather about mall owners—enough business to justify the space he is occupying. In fact, this could happen whether or not it had to do with Sunday closure or opening and just simply if you were not, in the mall owner's opinion, pulling your financial burden for the mall, which is a shared-expense type of thing. Then he might say that he wanted a merchant who was going to bring in more.

The protection would remain that you cannot be forced to operate while your lease is in place. I think most of the really small businesses, if they knew they were going to be in that kind of situation, would take advantage of the opportunity to find another area. I think that other areas are available. This is about as much protection as it is possible to put in without getting into a radical new area of real estate law, so to speak, or business law.

I think it is meaningful. I think the kind of small businesses that operate in malls and would want to close probably do not have a whole lot of people snapping at their heels with better businesses to occupy their territory. I think in most cases the mall owner would be content for them to stay on, unless in fact their overall business volume is such that the owner is unhappy. Since they are the land owner, we have no right to interfere in that.

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Mr. Chairman: I just think it creates the rhetorical question, "If that person is refusing to do it, why would any other tenant come back in?" Why would they take on any other tenant who would also have the provision of section 5a?

Mr. Hampton: I can give you a very good reason why. If you have, as was described earlier today in one of the other committees, the so-called boom economy that we have in southern Ontario where there is a lot of competition for retail space, I would think it would be very easy for the mall owner to go out and say, "Look, you people who all want retail space—"

Mr. Chairman: No, but they are still subject to section 5a. It does not matter who moves into that space. They are all subject to 5a.

Mr. Hampton: So they may sign a one-year lease and find that after one year of trying to establish themselves in business, they are out.

Mr. Chairman: That is right but the point I am making is that even if he brings in a new tenant, the new tenant is subject to section 5a. So all you have done is replace one individual who does not have to stay open on Sunday with another one who does not have to stay open on Sunday.

Mr. Hampton: Yes, but I think what we are concentrating on here is the legal piece of paper. We are missing the practical economic reality.

Hon. Mrs. Smith: The legal situation is clearly that the real estate person owns the land and subject to terms of a lease, he has the freedom to use his land as he sees fit. In this bill, we do not want to go any further than what we have done by way of protection because that is actually—

Mr. Chairman: I do not want go any further but I would just like clarification of what you are saying. Because if what you are saying is that at the expiration of this person's lease that he would be tossed out, what would be the point because the person coming in would also have the benefit of section 5a? What is the benefit of tossing him out, other than having to repaint the premises?

Mr. Hampton: Let's face it. The power is on the side of the mall owner. The economic clout is on the side of the mall owner to find somebody who will stay open on Sunday.

Mr. Chairman: No, but they cannot. Even if the new person comes in, the person is still subject to section 5a, unless they want to break the law. That is what you are suggesting.

Mr. Hampton: No, I am suggesting it is very easy to arrange a quiet agreement on this.

Mr. Chairman: That is called breaking the law.

Mr. Hampton: If that is called breaking the law, I would suggest it can go on and probably will go on a lot, particularly in an economy as you have now in southern Ontario. I would suggest that this does not provide much protection at all.

Hon. Mrs. Smith: Would you have any suggestion as to how to make it stronger?

Mr. Hampton: I have already, earlier on, provided some ideas as to how the general sort of legislation that we are throwing out has been made enforceable.

Hon. Mrs. Smith: No, just talking about this clause.

Mr. Hampton: I understand that. You do not want us to deal with the larger question. You want us to ignore the larger question and deal with the picayune.

Hon. Mrs. Smith: No, we are going through it clause-by-clause and I would say to you that we are dealing with this clause. If you want to stay after we have done clause-by-clause and have some further discussion, let's do it but we are dealing with one clause.

Mr. Hampton: I would say to you that this clause is like many other clauses in this proposed legislation. It is either weak or is superficial.

Hon. Mrs. Smith: That is your opinion. That is fine.

Mr. Chairman: Can we move on to section 6. Any problems or questions about section 6?

Hon. Mrs. Smith: The question that is obviously going to come up around this particular one is why the dates? Why it was put forward this way and the discussion, and the question of what alternatives there are.

We looked at the possibility of saying that all existing tourist exemptions were grandfathered and therefore if you are open now under a tourist exemption you could remain open because you are grandfathered. As you know, that is done in land use a lot.

We did not feel that was fair because, as we have already said, some municipalities have taken advantage of the tourist exemption to make openings that really would not stand up under re-examination. We think that since we are doing away with tourism as a reason to be open, the fairer thing is to say we will give a certain length of time.

This time will allow time for a municipality which has opened under the tourist exemption for it to examine its decision to open, whatever, under the tourist exemption, to pass whatever laws it did under the tourist exemption.

It can re-examine that and pass it again as its own bylaw knowing it has the powers given to it under section 4 to pass it as a local bylaw for whatever reason it wants for whatever size it wants.

One of those reasons, if they so choose, could be to pass a local bylaw that confirms them as tourist exemptions, if they feel they can define the tourism sufficiently. This came up earlier when we were talking about the Mennonite community around Kitchener. There may be places where a municipality feels that its particular exemption was so clearly and logically tourist that it can make that stand in the law and can define it as that classification of opening and let it stand.

We are simply saying that with any of these exemptions we have listed behind us here, when 1994 comes, if the municipality has not reaffirmed that it wants those exemptions on its books as a bylaw, they will automatically disappear. It gives lots of time for the businesses and for the municipalities to look at that, to make the adjustments that are necessary. That is the reason for it. If the bylaw is passed before 1994, then the bylaw takes effect from the time it is passed. But if it is not passed by 1994, the old provincial tourist designation disappears.

Mr. Chairman: Any questions on that from any of the members?

Mrs. Cunningham: Just why 1994?

Hon. Mrs. Smith: It was viewed as five years. If you want to examine that date as a committee, be my guests, but the date was a five-year time. We recognized in discussion around this that some places may have opened fairly recently, may have put money into businesses and opened, that now will look as if they are going to be closed if the municipality does not want it. They might like to have that time, in fairness to them. We considered five years for the existing ones. We ruled out grandfathering and put five years in as an alternative.

Mr. Chairman: Leases usually run in five-year multiples.

Mrs. Cunningham: OK. Well, given my example of my local drugstore that is now open, if London stays the way it is and makes no comment, that drugstore closes in 1994 if we do not change this legislation during the process of our deliberations.

Hon. Mrs. Smith: I think you have to be careful not to confuse the two. I am going to answer your question wrong because I do not understand your question. Presumably by the time we pass this, we have also passed some sort of law on drugstores.

Mrs. Cunningham: That is right.

Hon. Mrs. Smith: So the law on the drugstore is going to be what takes effect rather than this. The drugstores are not a tourist exemption. They are part of our provincial framework. These that are going to disappear are the ones that were declared tourist exemptions under these exemptions. They are not drugstores.

If your municipality wants to declare your drugstore open, it can do it for a more logical reason than that it is a tourist attraction.

Mrs. Cunningham: But if a municipality chooses not to make any

changes and this act takes place, my interpretation is that the drugstore closes in 1994 unless we change it.

Hon. Mrs. Smith: This 1994 has nothing to do, let me be clear—

Mrs. Cunningham: OK, that is what I am trying to determine.

Hon. Mrs. Smith: The 1994 applies to these tourist exemptions. The drugstore is a separate problem.

Mr. Chairman: They are not tourist exemptions.

Hon. Mrs. Smith: They are not tourist exemptions.

Mrs. Cunningham: So when will the drugstore close?

Hon. Mrs. Smith: The drugstore will do whatever you tell it to do way back in the section we discussed it under.

Mrs. Cunningham: Is it effective the date the legislation is passed?

Hon. Mrs. Smith: Yes. That is something you might want to look at: grandfathering them for a period of time of adjustment.

Mrs. Cunningham: I would suggest the government might want to do that. I am not going to suggest it.

Hon. Mrs. Smith: It is interesting because if you wanted to make an exceptional case—

Mrs. Cunningham: This takes you through two elections, Joan.

Hon. Mrs. Smith: —out of drugstores, then the fact they are not roped off now— In another section we have not come to yet, we give roped off stores a year to adjust. Just as we gave these tourist exemptions five years to adjust, we gave roped off sections a year to adjust. Adjustment can include going to the municipality to get an exception made. "Adjust" can mean whatever you want it to mean in that case, but at present drugstores are not in the roped off category. We felt it was contrary to say to a group which has never been roped off, "You can rope off for a year." That seemed foolish, too. They are in a peculiar category.

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Funnily enough, you see, because they are in a special category, I think they will have the opportunity, if they want, to address their problem to their municipalities independently. I think there is some value in that, because, as I said to you going through this, the drugstore problem is quite unique in many municipalities. If in fact they can see the writing on the wall and want to go to their municipality and get an exemption for other reasons prepared, then they will be in there as a separate group of people not affected by what the municipality decides about hardware stores, clothing stores, so on and so forth. It will pinpoint to a municipality the fact that it has to make a conscious decision about drugstores. That is the value in the way it is.

Mr. Chairman: OK. Can we move on to section 7?

Mrs. Cunningham: Just to comment, I think this is going to be one of the more political parts of this legislation, no doubt, where the municipalities are so angry they will not make any changes. At least the drugstore, therefore, will get caught in the middle. It then becomes that you go to the province and let it make the decision.

Hon. Mrs. Smith: The drugstore will be abiding by what is in the provincial framework or going to the city.

Mrs. Cunningham: That is right. And where municipalities want to make it a political issue between the province and themselves, there will be no decisions around that.

Hon. Mrs. Smith: They cannot make it a political issue between us.

Mrs. Cunningham: Yes, they will, and they can.

Hon. Mrs. Smith: No. It simply will not be in the book, so there cannot be a political issue with it.

Mrs. Cunningham: They will say, "The province closed your drugstore."

Hon. Mrs. Smith: They can say what they want, but legally it will not be an issue, because there is no legal process.

Mr. Chairman: Can we move on to sections 7 and 8? Section 7 is the penalty section. Perhaps the Solicitor General could start.

Hon. Mrs. Smith: Funnily enough, under section 7, I have listed down here to mention what just came up now with the member for London North (Mrs. Cunningham): namely, the issue of roping off in the drugstore. I had it there to make note of that to you as something that indeed you should be conscious of as you look at the bill. Others here are getting time to adjust and correct their situations, roping off, deciding what they are going to do. In the roping off, as you see, you have to make up your mind that the business area you use during the week is the business area that applies on Sunday.

If you presently have a store that is too big, then you will not open on Sunday, according to the provincial framework. But you will have a year to make your decisions and to address yourself to the municipality about this and for the municipality to make its decisions. If it decides it is going to stay with the provincial framework on this, on the size and so on, then you have a year to decide to get smaller or not open on Sunday. Those would be your choices.

But with the drugstores, as I have said and as you have correctly pointed out, they are not in the roping-off category, so the municipalities will have to look at them very quickly, depending partly on the disposition of this committee when it reviews the size and regulations around drugstores. So they tie in together and it is going to be something where one will influence the other, but you will have to keep the process separate in your mind.

I do not think there is any need here to spend much time on increasing the amount of the fines. I mentioned before that the fines are just being laughed at by the big stores. They simply pay the fines and carry on in business. This is partly because of the low fines that are put in. Hence, we have put as an instruction in our bill that judges should take into consideration the amount of business being done by a business that opens. We

had suggested in the select committee 100 per cent of sales.

The reason for variance here is that it would turn into lengthy, drawn-out law cases in which you would never be able to prove one thing or another. It was for that reason that we gave the instructions to the courts to make the penalty appropriate per charge, up to \$50,000, and that they should look at the likely profit made. If we tie ourselves down to 100 per cent profit, we have actually tied ourselves down to a less enforceable law, because it would take us so long ever to prove it. That is the thinking. It is made to look a little looser. It is actually in order to be more enforceable.

The most important thing in this area—well, there are two others. I was going to mention that I have some posters here.

Mr. Chairman: Does it say, "Bob Nixon, you've gone too far," or what?

Mrs. Cunningham: It says, "Joan Smith."

Hon. Mrs. Smith: When we say that advertising will be able to be used as evidence, I would like to cover the names of the stores so I am not giving them free advertising. These are all examples of large stores that advertise they are going to be open on Sunday. This has never been admissible as court evidence. We have ruled in our act that it will be admissible, either this sort of advertising or a sign on your window saying "Open Sundays," all admissible evidence. We think this will make it easier to enforce.

Most important of all is the injunctive clause, which says that either a municipality or the Attorney General can close down a store. We had in the past—you can remember the stores that were being charged in the Supreme Court, and all the police would do would be to hand them another charge. We are into that still. I mentioned the store that had 25 charges. They paid them off and went right on and kept doing the same thing over and over again. There was no power in the old act to do more than charge them.

Under this new injunctive clause, either the municipality or the Attorney General will be able to issue an order to shut them down then and there, even though the matter is before the courts. That is the injunctive clause. I think it is very important, because it means the minute the law is disobeyed the store can be closed down on Sunday instead of thumbing its nose at the law and really teaching disrespect for the law, lawmakers and law enforcers.

Mr. Chairman: I have two questioners. I would remind you that it is now 6:10 p.m. and there are some members who have other commitments.

Mrs. Cunningham: You always say that before I speak.

Mr. Chairman: I do not have any commitments. I am at your pleasure for ever.

Mrs. Cunningham: You always make me feel so guilty. I have a couple of questions.

Mr. Pelissero: Is it working?

Mrs. Cunningham: Yes. For working I feel guilty. Of course, \$50,000 is five times what we have now. Just as an observation, it is a very large fine compared to the other provinces. I am not one to worry about that. I

appreciate what you are trying to do. My question is whether really the responsibilities of enforcement are going to lie with the municipality.

Hon. Mrs. Smith: Only for the bylaws.

Mrs. Cunningham: For their own bylaws.

Hon. Mrs. Smith: For their own bylaws, which are more likely to be opening than closing, because the provincial framework is pretty closed.

Mrs. Cunningham: Yes.

Hon. Mrs. Smith: Municipal bylaws are more likely to be opening and therefore will not need enforcement. It is mostly going to be the provincial framework that you are enforcing.

Mrs. Cunningham: OK.

Hon. Mrs. Smith: Do you see what I mean?

Mrs. Cunningham: I see what you mean, if you are right.

Hon. Mrs. Smith: Supposing, for example, that this committee, in its wisdom, said drugstores could be 5,000 square feet and London, in its wisdom, which you would not approve of, said, "No, that's not fair; we're going to go to 2,400 feet," then it would have a bylaw that it passed and that required enforcement. The more likely thing you would foresee would be that they would say, "Five thousand is too small; we're going to let them be 7,000." Then that takes no enforcement, because you have opened them up.

Mrs. Cunningham: OK. Then you get my drugstore that opens at 10,000. We have just said London.

Hon. Mrs. Smith: Yes. Once you place your own bylaw—

Mrs. Cunningham: You are using us as an example. I do not think we will hear anything from London on this, but down the road you will for sure. Let's say we move to 7,500, because I think in the research you will see that we should probably move to 10,000. I hate to say it, but that is what I think will happen. Anyway, if London has its own bylaw of 7,500 and we stay at 5,000 and the store cannot open, why would not London?

Hon. Mrs. Smith: London would have to enforce its own bylaw.

Mr. Chairman: They get the penalty.

Hon. Mrs. Smith: They then get the penalty.

Mrs. Cunningham: Can they not therefore establish their own fine?

Hon. Mrs. Smith: Yes. They have the power, within the act.

Mrs. Cunningham: They cannot go over \$50,000.

Mr. Chairman: They get the money.

Hon. Mrs. Smith: They get the same planning privileges as the province.

Mrs. Cunningham: OK, but you are setting the fining privileges, or the levels of fines, for the province, and the municipalities cannot change them.

Mr. Chairman: We have to do that.

Mrs. Cunningham: OK. That is why I am asking.

Hon. Mrs. Smith: I think municipalities have to get permission when they increase their fines for parking violations, even.

Mrs. Cunningham: Could they increase it beyond this what you call provincial framework? Not likely.

Hon. Mrs. Smith: No.

Mrs. Cunningham: Is there a provincial framework around parking fines?

Mr. Chairman: I think it is \$500, if I am not mistaken.

Mrs. Cunningham: So there is.

Mr. Chairman: Summary conviction, \$500.

Mrs. Cunningham: What is the parallel for us doing this? Would it be traffic violations, the parking fine, a meter fine?

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Mr. Chairman: For the amount?

Mrs. Cunningham: Yes, for the amount.

Mr. Chairman: The amount is probably specifically done by each act. For instance, the Corporations Act just had—

Hon. Mrs. Smith: Yes.

Mrs. Cunningham: OK, that is what I am asking, so that I can answer the question when someone says: "Oh, they get to set the amount of fine for the province, but we're the ones who've got all the work to do. Why can't we set our own levels?" Then I say—

Hon. Mrs. Smith: Do not forget that the courts actually set the fines. All we are doing is setting the maximum and instructions. Our instructions are that the courts should look at the profit.

Mrs. Cunningham: And we have maximums in other acts.

Mr. Chairman: In the case of your pharmacy, your municipality, if it prosecuted and it was successful, would get to keep the fine to pay for the enforcement.

Mrs. Cunningham: You have said that three times, as if it is going to influence my thinking.

Mr. Chairman: No; I just wanted to make that clear. Can I go on to Mrs. Marland?

Mrs. Marland: The question of my colleague the member for London North points out the whole false direction that this particular section leads the province. We have so many examples, and I say it with respect to the judiciary, where when you leave the administration of law to the courts, it is not effective.

Mr. Chairman: Be careful.

Mrs. Marland: We do have examples, and I think in light of the fact of—

Mr. Philip: Some of the judges were appointed by the previous government.

Mrs. Marland: —the unfortunate situations that we have time and time again, where the whole scope of the penalty is dealt with entirely by the courts, by the bench, if we are sincere in saying what this particular offence should be penalized at, at what level the penalty should be given, then I think to say "up to \$50,000" is simply not enough.

Mr. Chairman: You are looking for a minimum penalty?

Mrs. Marland: What I am suggesting is that, without going back over those marvellous examples we had earlier this afternoon, a lot of those people would not care if it cost them \$50,000 to be open. I know you have said here that "the court shall take into consideration any evidence respecting the gross sales in the retail business," but it is not saying it must. In other words—

Hon. Mrs. Smith: As a political arm, we cannot tell the courts what they must do; there is a separation historically. But I pointed out to you after that the importance of the injunctive clause. You are talking about the big, powerful, sophisticated stores making lots of money. Those are the ones I was talking about earlier.

Basically, the day they open and you, a citizen running a competing store, complain, they can go and get an injunction that closes them. They will not be able just to keep on doing business. They can close them then and there.

Mr. Chairman: It is also "shall," which is mandatory, and a court would be required to look at that.

Mr. Philip: Would the court not find them in contempt?

Mr. Chairman: They could. They could actually put the directors, I would think, in jail.

Hon. Mrs. Smith: Yes, with the injunctive clause you see there.

Mrs. Marland: In my opinion, I do not think \$50,000 is high enough.

Hon. Mrs. Smith: If they continue to break the law, they can be held in contempt.

Mrs. Marland: If you are saying that we cannot tell the courts what to do, then how can we tell them—

Hon. Mrs. Smith: You cannot, under the present law. We could, I

suppose, have a minimum, but you would have to think of small stores that—

Mrs. Marland: But in your law we are saying that the fine shall be not more than \$50,000, so we are telling the courts what to do.

Hon. Mrs. Smith: Oh, yes, we put a maximum on, and we considered that the maximum would cover all possibilities, because you are not talking, as we were before, about things that take two and three and four years to come to court; you are talking about situations that can be dealt with immediately.

If they open one day, you get an injunction and close them and they open the next Sunday and you get an injunction and close them, probably by the third Sunday you can put the owner or director in jail. I think that would discourage them a bit.

Mrs. Marland: Does it say that? Do we know that?

Hon. Mrs. Smith: Yes. That is contempt of the injunctive order.

Mr. Chairman: Yes, subsection 8(1) is an injunctive power, and if they have breached it, they could be put in jail or the officers of the company could be put in jail.

Mrs. Marland: I do not support \$50,000 as being the upper limit, but I am not convinced that is not an arbitrary figure that you have selected.

Hon. Mrs. Smith: Any figure is arbitrary. If I passed around a piece of paper here, you would each put down a figure.

Mrs. Marland: I know, but, with respect, of course any figure is arbitrary. What I am suggesting is that you are the authors of this legislation—

Hon. Mrs. Smith: That is right, and we figure \$50,000 covers all possible needs because it is only going to be basically a one-time type—at most a two-time type—of opening before these people are in jail. So I think \$50,000 per offence is going to more than cover it. I really thought this was one clause I would not get any argument about.

Mrs. Marland: I will tell you why. For some people, it would be worth their while. I think it is a very serious matter. I think for some businesses, even if they can only scoot around it one, two or three times, in any case, a conviction of \$50,000 is a drop in the bucket for them, especially one particular business, considering the commodity it sells on a Sunday. It is not a 10-cent box of Band-Aids. The point is that if you are really sincere in having something punitive as a deterrent, then I think you have to have a realistic fine and I do not think \$50,000 is realistic.

I will tell you one thing more that has not been taken into account here. When we talk about issuing injunctions and going through the legal procedure and through the courts, every time one of those cases goes to court, it costs you and me and the rest of the taxpayers of this province money. What we want to do is have legislation that keeps it out of the courts so that they will not risk a \$50,000 fine because they can afford it and it does not matter to them. We want to make sure the whole process does not go into the whole legal system. Goodness knows, we have far too many cases to be heard in the courts today as it is. When they go through the appeal process of their convictions, we can tie the courts up with this kind of improperly written or

not strongly enough written legislation because of the fact that, for those retailers, it is worth it.

Hon. Mrs. Smith: The legislation is very strongly written. The injunctive clause is very strong. The use of advertising is strong. You think there are businesses out there that would make way more than \$50,000 and it would be worth it to them. They would only get to do it once. They have to do all the organizing to commit that one crime one time, because otherwise they risk being in jail. I do not know of any businesses like that. But take it up with people as they come through. Ask them. Personally, I think \$50,000 covers it. If you can persuade the committee it should be higher than \$50,000, I will be happy to look at it.

Mr. Chairman: I think the injunctive power is the most significant feature of it, because in fact it is a court order. If you breach it, you can, on application, wind up in jail. The reason it is done in the Supreme Court, I believe, is the Supreme Court is the only one that would have that authority to hear an injunction application.

Mrs. Marland: Without an appeal.

Mr. Chairman: Anyway, your comments are duly noted. I think you should maybe speak to your colleague. If you want to ask another question, I am perfectly open to it.

Mr. Hampton: First of all, the lower limit of the fine is not spelled out, and I ask you this: If the government is taking enforcement seriously, then should not the lower limit of a fine on first offence be spelled out? There is some legislation that says, "On first offence, the fine shall be...on second offence, the fine shall be...." This leaves the discretion to a judge.

It is not beyond argument that a lawyer could say: "The province considers all this so insignificant. They have given the municipalities all kinds of loopholes, so obviously they do not consider this to be very serious stuff. A \$1,000 fine ought to do." That would be a plausible argument in this case. I am suggesting that if the province is really serious about enforcement of the fine on first offence, there ought to be a lower limit on the fine, and that ought to be a hefty lower limit. That would signal to the courts that the province really is serious about enforcing this legislation.

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Hon. Mrs. Smith: The province is serious about enforcing it. For myself—this is really not a heavily held opinion; it is just a personal opinion—the requirement that the court shall look at the potential profit made takes care of that. I really do not want to be too punitive on small businesses that maybe thought they would do something smart and then they are suddenly struck with the \$1,000 minimum.

I can think of lots of situations. I cannot think of a situation in which the big guy is going to benefit by not having a minimum, because we have instructed that the profits be taken into consideration. I can think of situations where some small guy in some small town or tourist area even inadvertently broke the law.

Myself, I do not think you need a minimum. Once again, if the committee wants to discuss this further and recommend a minimum, we are serious about

it. Simply for myself, I believe this to be written in a very serious way.

Mr. Chairman: Perhaps we can listen to the witnesses, see what their views are and then address the matter.

Mr. Hampton: I have a second question. If the minister is satisfied that these are fairly hefty penalties and that they will work, is it the minister's opinion that one of the major reasons the previous act did not work was because the fines were not severe enough? I note there is a pretty significant difference in terms of \$50,000 and what was proposed under the former act, which I believe was \$1,000.

Hon. Mrs. Smith: If you want to meet me in the hall and get my opinion of those last fines, I would be glad to give it to you, but as a minister sitting at this table, I really do not want to pass judgement on the motives of the judges. They did what was possible within the old law.

Mr. Hampton: I think that bears heavily on what is happening here.

Hon. Mrs. Smith: The new law is different. The new law says they have to look at the profits; the old law does not. If they looked at the profits of these stores, then they could not have given those light fines that made it attractive for those stores to break the law, pay the fine and keep on breaking it. Obviously, for those stores, the judges would seem not to have given consideration to the profit or the stores would have stopped.

Mr. Chairman: It also gives the Court of Appeal, which heard an appeal from sentence, a guideline from which to determine whether or not they had made the proper decision from that sentencing standpoint.

Mr. Hampton: My point is that instead of having a law that is quite clear in terms of penalty, you are into a situation where you will have an argument over determining gross sales on a given day.

Hon. Mrs. Smith: No, we did not put that in.

Mr. Hampton: I have page 18A in front of me.

Hon. Mrs. Smith: Sorry, I was thinking of the old one, of the profits.

Mr. Hampton: We have gross sales on a given day.

Hon. Mrs. Smith: Yes.

Mr. Hampton: Because of the difficulty of gathering that evidence, it seems to me you would again get the court into a realm of, if not uncertainty, at least difficulty.

Hon. Mrs. Smith: You see, on the one hand, you are calling for us to be stiffer, and on the other hand, it was in order to avoid that pitfall that we were less stiff, that we stayed with the "take into consideration" the profit, because we wanted it to be enforceable. You have this happy balance between the two. This was legal advice that this was the best way to go.

Mr. Keyes: Is it possible to get other examples? We might just ask research to check with the Ministry of the Attorney General. We have only about three or four other situations I can think of where we have set the

minimum fines. In drunk driving, as an example, we do set a minimum fine. But we do not have much legislation. It might be very helpful, just on the issue, to find out what are the other pieces of legislation that set minimum fines.

Mr. Hampton: I would merely suggest that where government is really serious about enforcing an act, government sets minimum fines.

Hon. Mrs. Smith: As I say, I feel it would too punitive to the very small business and the very unsophisticated place, but I leave it with the committee.

Mr. Chairman: Let us hear from the witnesses and see what their view is.

There was an application for a motion made, which I find is in order. I wanted to check it because I feel that when we start out as a committee—I think Mr. Philip's comment was quite accurate—on a consensus basis and then move a motion, that only sets the tone for future consensus not being reached and everything being done by motion. I would hope we could avoid that. But the ruling is that you are quite correct, Mrs. Marland. You were in order to move that motion. I apologize.

Mrs. Marland: Obviously, I moved my motion at a time when I realized that what in fact has happened would happen, which would be that the elapsed time of the afternoon's hearing would be taken up with going by the clause-by-clause and there would not be time to get back to deal with the minister's statement. Because I anticipated that happening, I placed the motion to give the committee the opportunity to reconsider its consensus opinion.

I recognize what a consensus opinion is. I recognize very well, after three years, how committees have to work with consensus and how the committee work flows as a result of that. It was simply a motion placed at a time when the committee might have wanted to reconsider its consensus opinion. In any case, I also recognized that with the numbers of the party representation on this committee, my motion had no chance of passing.

Mr. Chairman: Oh, you should never think that.

Mrs. Marland: Because I am quite aware that the—

Mrs. Cunningham: Did Hansard record the statement by the chairman?

Mr. Chairman: I hope it did.

Mrs. Marland: In view of the fact that it is now 6:26 p.m. and my motion has no relevance whatsoever to this committee and its work, I am quite happy to withdraw my motion.

Mr. Chairman: Thank you very much. We stand adjourned until 10 a.m. tomorrow.

Hon. Mrs. Smith: I have one—

Mr. Chairman: Oh, yes; I am sorry. I gather that for the balance of the hearings, your parliamentary assistant will be carrying the bill.

Hon. Mrs. Smith: That was the thing I wished to tell the committee.

It is often done. I am very grateful to have on hand and on our administration of justice committee my parliamentary assistant, Ron Kanter. He has good experience. He has municipal background, and regional municipal background at that, which I do not have.

Mr. Philip: Where is his municipality?

Mr. Kanter: I am sure I will discuss it.

Hon. Mrs. Smith: I know that he will be in close contact with me, but I think it is for the good of the continuity of the committee that he carry on. When he speaks it will be with my blessing, unless for some reason he and I have a falling out.

Mr. Kanter: I am even going to adopt a London address for the duration of the committee.

Mr. Chairman: I think we are falling apart here, committee. Then you will be back, minister, for clause-by-clause consideration?

Hon. Mrs. Smith: We can discuss that at the time. I am available to the committee. I wish to be most co-operative with the committee. You may want, at that time, just to have me in the background since Ron will have done all the work, or you may wish my attendance at some or all of it.

I assure you that I want to co-operate with the committee. But I think it is important that it be done in a way that does not result in my stepping in and then putting us back at the beginning. That is all. If it has made progress, let's stay with the progress we have made.

The committee adjourned at 6:29 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

EMPLOYMENT STANDARDS AMENDMENT ACT

THURSDAY, AUGUST 4, 1988

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

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Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Marland, Margaret (Mississauga South PC) for Mr. Cureatz

Nicholas, Cindy (Scarborough Centre L) for Ms. Hart

Pelissero, Harry E. (Lincoln L) for Ms. Poole

Reycraft, Douglas R. (Middlesex L) for Mr. Kanter

Clerk: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)

Saunders, Ronald, Manager, Labour Markets and Adjustment, Policy Branch

Ignatieff, Nicholas, Acting Director, Policy Branch

Dutton, Penny, Director, Employment Standards Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, August 4, 1988

The committee met at 10:08 a.m. in room 151.

EMPLOYMENT STANDARDS AMENDMENT ACT

Consideration of Bill 114, An Act to amend the Employment Standards Act.

Mr. Chairman: We will proceed in the fashion we did yesterday, if that is acceptable to the committee, and the minister will read an opening statement. I understand, however, he will have his staff go through the clauses of Bill 114 but he will still be available for questions on both items. Can we have unanimous consent to do that?

Agreed to.

Mrs. Marland: Can I just ask a question? If the procedure this morning will be as you have just outlined, are we going to be limited to finishing at noon or is the minister available to continue the questions this afternoon?

Hon. Mr. Sorbara: I was operating on the basis that I would be appearing before the committee from 10 until noon. I do have an engagement which requires me to be elsewhere at one o'clock, but if it is the committee's wish, I certainly could make arrangements in my schedule this afternoon to return here, if the committee feels that is appropriate and necessary.

Mr. Chairman: Why don't we play it by ear?

Mrs. Marland: How long is the presentation this morning?

Mr. Chairman: I understand it is a five-page opening statement. Is that right?

Hon. Mr. Sorbara: Yes. What I propose as a matter of procedure is that I will read a rather brief and straightforward opening statement and then I will ask one of my officials, whom I will introduce in a moment, to take the committee through the bill clause by clause. I think that will take perhaps half an hour, perhaps a little bit less, and then I will be prepared to answer your questions, looking forward to a noon adjournment or recess or whatever you call it here in committee.

Mr. Chairman: Just for purposes of those who may be viewing us from the outside, today we have before us the Minister of Labour, who will be making an opening statement with reference to the proposed Bill 114, An Act to amend the Employment Standards Act.

MINISTRY OF LABOUR

Hon. Mr. Sorbara: Before I begin, I want to just take a moment and introduce Nick Ignatieff, sitting immediately to my left, who is with the Ministry of Labour and is the director of the policy branch of the ministry. In a moment, or perhaps right now, I will introduce Ron Saunders, who is the

manager of the labour market analysis unit. Within a few moments, as I have said, Ron will do a presentation on the bill which gets into far more detail than is contained in my opening statement.

As this committee knows, the government of Ontario has a responsibility to protect the rights of retail workers who may be affected by any widening of Sunday shopping owing to the passage of Bill 113. This responsibility will be fully and effectively met by the provisions of Bill 114, which is being placed before you today.

This legislation makes it possible for people working in retail establishments to refuse to work on Sundays when they consider that work to be unreasonable, and to do so without fear of reprisal.

In addition to protecting the rights of those who may be affected by Bill 113, Bill 114 also provides protection, for the first time, to employees who are already required to work on Sundays.

A key provision is that Sunday work may be refused where an employee considers the request to work on Sunday to be unreasonable. This test of reasonableness is essential. It provides for flexibility in the application of the legislation, encouraging employers and employees to arrive at working arrangements which take into account the individual nature of the establishment and the individual nature of the employee's circumstances.

Where employers and employees cannot agree on what is reasonable, the Ministry of Labour will provide a mediator from the employment standards branch. If a case goes to mediation and no settlement is reached, the matter will be referred to an independent referee for determination. I fully expect that this process will be used only as a last resort, for Bill 114 encourages employers and employees to arrive at Sunday working arrangements on the basis of co-operation and mutual agreement.

The legislation is designed to protect workers from any kind of reprisal should they refuse an employer's request to work on Sunday. If an employee feels that he or she is being penalized or threatened in any way, Bill 114 provides that the employee may invoke that same mediation process.

It is important to note that a refusal is based on the employee's judgement that a Sunday work requirement is unreasonable. If the employer objects to a refusal, the onus is on that employer to take the case to mediation and, if necessary, to a referee.

Furthermore, the employee is entitled to continue to refuse Sunday work unless and until a referee determines that the request is reasonable. The employer may not take any kind of action against the employee while awaiting this determination, even if the referee should subsequently decide in favour of the employer. These provisions are designed to mitigate any fears an employee may have of saying no to Sunday work.

Bill 114 is an important piece of legislation. It provides, for the first time in the history of this province, meaningful, workable and enforceable protection for all employees of retail establishments that open on Sunday. Its aim is to make Sunday work voluntary wherever possible, and I believe it will succeed in that aim.

Now, with your permission, I would like to introduce Ron Saunders, who I said—

Mr. Philip: Mr. Chairman, do we follow our usual procedure of asking questions on the minister's opening statement?

Mr. Chairman: I do not see any reason to deviate from that. Perhaps we could have unanimous consent that it would be on the same basis, a maximum of 20 minutes to each caucus.

Mr. Philip: Twenty minutes, OK.

Mr. Chairman: Twenty minutes or less.

Mr. Philip: I do not think we will need 20 minutes for each caucus.

Since this is, as you call it, labour or employee legislation, can you name one trade union representing employees working in the retail industry that has in any way endorsed this as an effective bill?

Hon. Mr. Sorbara: I am not here to express the views of trade unions. I should tell you, though, that I have met with a number of trade union officials and spoken with them about our approach. I have read in the daily press that a number of trade unions who represent workers in the retail establishments see the potential for availing themselves of this legislation, and of course that is precisely what the purpose of the legislation is. We would obviously welcome individuals using this legislation to to resolve disputes that might arise in respect of the assignment of Sunday work.

Mr. Philip: It is normal for cabinet ministers to try to obtain public support from whatever groups out there are concerned with the legislation. My question was fairly specific: Is there any union which you can point to, or any employee association or employee group, that actually has said: "We support this legislation. This is good legislation and we endorse it"?

Hon. Mr. Sorbara: Once again, I am afraid my answer is going to be somewhat repetitive. I have met with a number of trade union organizations to discuss this approach. I disagree with you, at least disagree with your premise that the Minister of Labour or the government, in dealing with labour legislation, attempts to get the endorsement of any particular group when approaching legislation.

You will recall that I recently introduced very substantial amendments to the Workers' Compensation Act and had very extensive discussions with virtually all of the participants, all of the stakeholders in the workers' compensation system. Really, that involves virtually every worker in the province, save and except those who are exempt because they are covered as federal employees or are exempt based on certain exemptions within the act.

As I read the press from those announcements, I think I am safe to say that the bill was generally well received within the province. Yet it did not receive a specific endorsement; no seal by any trade union or other organization was placed on that bill. Nevertheless, I think that bill is sound public policy and I think this bill is sound public policy as well.

Mr. Philip: You seem to come from the Joan Smith school of answering questions. I gather that your answer is no, that no trade union has endorsed this bill, that no trade union has said, "This is a good thing for our members who are working in the retail industry." Is that not what you have just said? Can you say yes or no? I am sure they are two simple words.

Hon. Mr. Sorbara: No, that is not what I just said, but yes, I have not received a specific endorsement from any union or organization, a specific stamp of approval on the approach that we are taking.

I just would add, if I might, that I think the approach we have taken is consistent with the approach to resolving issues generally within the labour area. The test of reasonableness, for example, is a test that labour arbitrators, labour mediators and labour panels are very familiar with, and I think it will not be unfamiliar to labour organizations as they apply this new act within the context that the act provides.

Mr. Philip: During the hearings of the select committee, the select committee came to the conclusion, based on testimony from such people as the managers of Canadian Tire stores across this province, that the retail industry is of such a nature that you can pass any bill you want, but, and I am using the words of numerous witnesses from the employer's side, "There are ways in which we can force people to work on Sunday, if we are placed in a position to do so."

Indeed, a number of managers of Canadian Tire stores said: "It is fairly simple. If a person is unco-operative, he knows he will not be promoted. Employees know that we can tell them they will have to work on Sunday when we are hiring them, and if they say they are not open to that, then they simply will not obtain the job. Existing employees can be phased out simply by scheduling them at those times that are inconvenient, such as Thursday night for Mrs. McGillicuddy because she takes a course and needs one last course to get her degree and Friday night for Mr. Smith because he has a boy scout troop that he is in charge of."

Canadian Tire store managers said: "We're not stupid enough to disobey a law. There are so many other ways in the retail industry, unlike factories that are more structured and have a certain form in terms of hours and so forth. In our business, if an employee wants to be unco-operative we can do whatever we want without breaking the law and we can be quite coercive if we have to."

Are you aware of that testimony by Canadian Tire store managers who are opposed to Sunday shopping, but none the less say that if they are forced to open on Sunday, they will find ways of making their employees work without breaking the law?

1020

Hon. Mr. Sorbara: I will begin by saying I have heard reports of that testimony. I do not think I share the same view of employers that perhaps you do. I believe that most employers are good corporate and good individual citizens, and when a law is passed, they respect that law. I think if we were to operate on the basis that employers will violate any law they feel it convenient or necessary to violate, we would take a rather different approach to legislation—

Mr. Philip: With respect, the view I expressed was not my view.

Hon. Mr. Sorbara: I hear you.

Mr. Philip: It was a view expressed by employers who said that, when the gun was to their head, in order to stay alive, they would do what they had to do, not just to protect their own investment but to protect the jobs of all

the employees. If that meant they had to stay open on Sunday in order to meet the competition, even though they were against Sunday opening or Sunday working themselves, they would have to bite the bullet and they would do whatever was necessary to keep that store open. If that meant ways of coercing their employees, they would simply have to do it.

I hardly think that is my pessimistic view of management. I was a management trainer. You were not. I have worked with managers, I am sure, a lot more than you have. I have a very optimistic view of managers, but I just think that managers, like anybody else, if they have guns to their head, will do whatever is necessary to save themselves and their employees. That is what the Canadian Tire store managers were doing. They are law-abiding citizens, but if they are put in a tight spot and the difference is survival, they will take the survival route. That is what they said. These are not my words, but theirs.

Hon. Mr. Sorbara: I appreciate, Mr. Philip, that those are not your words. Those are the words of a manager of a Canadian Tire store.

Mr. Philip: Several of them.

Hon. Mr. Sorbara: Just as a sidebar, it is interesting that last Monday was a civic holiday covered by the Retail Business Holidays Act. As I was driving around in my own area, virtually all the stores were closed and yet the Canadian Tire store was doing a booming business, although it is not, as I understand it, subject to a tourist exemption. It simply was open in opposition to the current law that is in place in the province.

Mr. Philip: You may find it was the market garden section of the Canadian Tire store that was open, but anyway—

Hon. Mr. Sorbara: Perhaps I could just try to finish my answer to your initial question. I do not attribute those views to you, obviously, and I do appreciate that you are reporting the views of others who have testified before other committees.

Let me just say, though, that I do not think the fact that there is a potential for some people to violate a law is sound enough justification not to put that law in place. I would imagine that when the initial Occupational Health and Safety Act codified the right of an employee, of a worker, to refuse unsafe work and protected that employee, there were those before committees considering that bill who may have argued that you have to understand the requirements of business and managers and, my God, you simply cannot put in the hands of workers the right to say, "I am not working in that unsafe situation."

Now, after 10 years of experience, we realize that is a very important right. It is one of the tools, one of the mechanisms we have for ensuring as best we can through legislation that our workplaces are safe.

Is that provision violated? Are there cases where workers have not taken the appropriate steps in health and safety to refuse to work, to exercise that right? Sure there are, but just because there are I do not think is a good argument to repeal that section or say that right is not important within the context of ensuring that the workplace parties have an appropriate environment within which to work, an appropriate regulatory framework.

If I might just conclude, this bill really does put a significant right

in the hands of the employee, the retail worker. Let me just give you an example of how it is significant. You talked about Mrs. McGillicuddy who might have a class on Thursday night that she holds precious at a local community college perhaps.

You and I know that in the retail sector, if the employer says, "I am sorry, Mrs. McGillicuddy, but we are going to be opening Thursday nights now from six until midnight. Our market analysts say that is where the market is. I am very sorry but you are not going to be working Thursday mornings any more. You are going to be working Thursday evenings."

So long as those work hours come within the 48-hour maximum under the Employment Standards Act, Mrs. McGillicuddy has no remedy. If she does not like it, she might tell her boss she does not like it but her boss will say, "If you do not like it, go and work for another store because you do not have a job here any more." That is it really.

What this bill does plainly and simply is say that in respect of Sunday, that is not the case. In respect of Sunday, Mrs. McGillicuddy can say with the protection of Bill 114 that, "I do not accept that assignment of Sunday work because I consider it unreasonable."

That balances the scale somewhat and will, we believe, work towards an environment where, to the largest extent possible, the retail workers who are working on Sunday in the retail sector are there because they want those jobs, that is, that the work is voluntary.

Mr. Philip: I think you have just made my point, which is that there are ways in which employers can force people even under this act.

Hon. Mr. Sorbara: I would disagree with that.

Mr. Philip: That is what the employers are saying and that is what the employees are saying.

A question then on your fourth paragraph. You say that the legislation encourages "employers and employees to arrive at working arrangements which take into account the individual nature of the establishment and the individual nature of the employee's circumstances."

Are you aware that there are a number of stores which have said that the nature of their establishment is such that they must have their skilled workers on the premises whenever they are open and that there is no flexibility?

The case in point refers to the small hardware stores where they have a very large inventory and where people come in and want advice. In the one in the Albion Mall in my riding, the son of the owner simply says, "It means that my father and I have to be here on Sunday if it opens because we cannot simply hire a student then. With this large an inventory, people want advice when they come in here."

Jewellery stores have told us that with their rather expensive inventory they have to have the owner on the premises for security reasons, if not for service. Canadian Tire store managers have also said that their management will have to be on the premises because again people want advice when they go into those types of establishments.

The nature of many of the retail businesses, according to testimony that the select committee received—a committee report which was endorsed by the Premier (Mr. Peterson) before the election, but now was rejected after the election—was such then that they are going to have to be there whether you want it or not or whether they want it or not.

You can pass any law you want, but it does not change the nature of the retail business. That is why both employers and employees are saying, "Pass any law you want. It is not going to make any difference."

Mr. Chairman: Perhaps we will let the minister have an opportunity—I should point out as well, Mr. Philip, in fairness to your colleague, that if he is going to be asking some questions, perhaps you would like to leave some time for him of the 20 minutes.

Mr. Philip: Sure.

Hon. Mr. Sorbara: I think that was more of a statement than a question. I will leave it at that other than to say that the bill does not obviously cover store owners. It covers retail workers, employees as defined in the act. As my statement says, we do create a framework that will take into account the individual nature and circumstances of the place of business and the circumstances of the employee.

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Mr. Philip: One last comment. It does involve store owners because it sets up a so-called arbitration system, however weak that may be. The fact is that both employers and employees out there are saying that this is useless legislation.

Mrs. Marland: Yesterday, we heard from the Solicitor General (Mrs. Smith) that, "It is a fact that tourism is extremely important to Ontario's economy and it is the responsibility of the government to support and encourage it."

You are the Minister of Labour, not the Minister of Industry, Trade and Technology (Mr. Kwinter) and not the Minister of Tourism and Recreation (Mr. O'Neil). As the Minister of Labour, do you feel it is your responsibility to protect the people in the labour force? Do you support the fact that the Solicitor General is saying that, because tourism is extremely important to Ontario's economy, Ontario forfeits or certainly puts at risk the concept of a common pause day? At what cost does the labour force, for which you are responsible, have to put at risk its right to a common day of pause?

Hon. Mr. Sorbara: I am not entirely sure of your question. You may want to rephrase it and perhaps help me to exactly what point you are getting at.

I would simply say in response that there are currently in this province about 1.6 million employees who are liable to work on some Sundays now; some 32 per cent of retail trade employees are liable to work on Sunday now. I agree that Sunday is a rather more calm day than most of the other days of the week, but it would be inaccurate to suggest that a great number of us, as residents of this province, are called upon to work on Sunday as part of our normal working lives.

Mrs. Marland: As the Minister of Labour, you must agree that the

number of people— You have just quoted 1.6 million. I would suggest, with respect, that a large number of those entered their form of employment knowing that it involved Sunday work, which is another issue.

Hon. Mr. Sorbara: Not necessarily.

Mrs. Marland: Could you answer the question: Do you know the number of employees who are affected by this legislation in Ontario?

Hon. Mr. Sorbara: Every retail worker in the province whose place of business has legislated authority, through Bill 113 and a municipal bylaw, every retail employee whose place of business is open on Sunday, is protected by our legislation.

Mrs. Marland: How many is that? How many are affected?

Hon. Mr. Sorbara: About 500,000 employees.

Mrs. Marland: But you are saying there are 1.6 million.

Hon. Mr. Sorbara: No, I said there are approximately 1.6 million employees who are liable to work on Sunday in some business or other. That may be the manufacture of automobiles, it may be the finishing of steel products, it may be the operation of a hospital.

Mr. Chairman: About 32 per cent of that figure was the amount that might be in the—

Mrs. Marland: So you are saying we have 500,000 employees in the retail trade?

Hon. Mr. Sorbara: That is right, yes.

The point I was trying to make is simply that for many Ontario residents, Sunday work is a reality, whether they are ensuring that people are appropriately checked in at airports or, as I said, manufacturing cars or operating buses or whatever. A lot of people are required to work on Sunday.

Mrs. Marland: Of course, the difference between your viewpoint and mine is that the numbers we are looking at are people who went into the police force, the nursing profession, the transportation industry and so forth knowing that they would be working on Sunday and knowing that they would not, in all likelihood, have very much choice about working on Sunday.

Hon. Mr. Sorbara: That is not always the case, though. Many businesses change the nature of their operation. A manufacturer may, for example, have traditionally manufactured five days a week, but the economy is booming, there are new opportunities, and he decides to manufacture seven days a week.

Mrs. Marland: In the huge majority, we know it is the choice, I might add. The number of manufacturers and the number of retailers who, through various decisions on their part, have chosen now to work on Sundays has not been the majority of Sunday employment in the past. We are dealing now with a different issue in terms of the concept and the future of the kind of province we want.

Quite frankly, I would like to ask you, as the Minister of Labour

responsible for the labour force, responsible for the people who are going to have to work on Sundays, should whoever choose that Sundays be open, whether it is the employers, the manufacturers, the municipalities, whom you have so kindly decided to dump this responsibility on to, do you not have a concern, does your government not have a concern, about the fact that we will have a province with a government that simply does not support a common day of rest, a common day of pause?

In spite of the fact that the Solicitor General said all of these ideas were myths yesterday, we know that your government has chosen to ignore thousands and thousands upon thousands of people in this province who have cried out to you and said, "Please, don't change the legislation to make it possible to have Sunday work and Sunday opening."

Mr. Chairman: I connote that is a question.

Mrs. Marland: I am asking you, as the Minister of Labour responsible for those people who do have to work, does your government not support a common day of pause?

Hon. Mr. Sorbara: I am going to try to answer as much of that question as I can. It is a rather long preamble, and I would take issue with some parts of it.

There are many retail workers, approximately 160,000, who are currently called upon to work on Sundays because their stores are open. Many of those retail workers may have begun their working careers in stores that previously did not open on Sundays and, because of an exemption granted by a municipality with respect to tourism, that store then became a store that legally opens on Sundays and that employee is required to work on Sundays. That is the dynamic of the Retail Business Holidays Act as we have it now.

I think the genius, if I might, in the legislation we are considering here today, Bill 114, is that it is a companion to Bill 113 and it acknowledges that Bill 113 may change somewhat—it is difficult to estimate how much—the dynamic of Sunday retailing. Yet Bill 114 stands on its own and affords protection to the entire workforce in the retail industry, so that all employers will have to take into consideration that in negotiating their terms-of-employment contracts with their employees, there is a different standard, a different threshold, a different set of rules if that store is to open on Sunday.

I think that is important, because I think the whole thrust of the Retail Business Holidays Act is to give special regulation to Sunday retailing and appropriate worker protection. Appropriate worker protection was essential and was part of the commitment we made.

I would simply add, Mrs. Marland, that when the previous government in this province initially introduced the Retail Business Holidays Act and provided for a great expansion of retailing on Sunday, a dramatic expansion of retailing on Sunday, they did not have a piece of companion labour legislation that addressed the realities of Sunday work for workers in the retail sector. Our government has.

Mrs. Marland: I am glad you mentioned the previous government of Ontario, because the previous government of Ontario supported a common day of pause, and interestingly enough, an all-party committee of this current Legislature, of which your party is the government, still supported the

retention of a common day of pause in this province. When you talk about the previous government and the current government, at least the previous government in Ontario protected the future of the province and the very fabric of our society by listening to the people and saying, "Yes, we support a common day of pause." That is what the recent act was about. Unfortunately, we are now dealing with a bill which—

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Hon. Mr. Sorbara: Are you saying that is what the current act is about?

Mrs. Marland: No. You mentioned what the previous government in this province did. What I am saying is that the previous government of this province listened to the people. The previous government of this province would not have ignored all the thousands of voices that have come through petitions and letters and phone calls to your government saying, "Do not change the legislation to open Sunday shopping."

I do not know why the current government, frankly, has the right to ignore those voices, because there are no voices and letters and phone calls from the side that wants open Sundays, which is going to be, without doubt, as we know, a result of this legislation, Bill 113 and Bill 114.

I have one final question and then I want to yield some time to my colleague.

Mr. Chairman: Just before you do that, I guess this is for the benefit of everybody. We have the minister here so we can ask questions. I think we just sort of eat into our colleagues' time if we get into a debate.

Mrs. Marland: I agree, but it is hard to ignore the minister's replies.

Bill 114 has just been described by the minister as a piece of genius. Well, I would hope that no real genius has to be measured against Bill 114.

Hon. Mr. Sorbara: If I might interrupt, I said the genius of the legislation.

Mrs. Marland: I am sorry. Is Bill 114 not the legislation?

Hon. Mr. Sorbara: Yes.

Mrs. Marland: Well.

Mr. Chairman: I do not think he was taking credit as being a genius.

Mrs. Marland: No, not the minister being a genius, my goodness.

Hon. Mr. Sorbara: Far from it.

Mrs. Marland: Far from it, I would agree.

No, Bill 114 has been described as a piece of genius. In the minister's opening statement this morning, he used the words "reasonable" and "unreasonable" six times. He leaves the definitions of "reasonable" and "unreasonable" to two different parties at some point during the mediation,

one a mediator and one an independent referee.

How is it that you, as the government, can develop a bill like Bill 114, describe it as being a piece of genius and not have definitions for "reasonable" or "unreasonable"? This is the very pivot on which this bill turns. How can you leave that arbitrary decision to a mediator or a referee? You do not even describe who the independent referee will be. How long will the process take? Will these workers be into their retirement before they know whether they have been reasonable or unreasonable?

How is it that if this bill is such a piece of genius that you could not have written into it a very clear delineation of when a worker has to work on Sunday and not risk losing his or her job?

Mr. Chairman: Let's hear an answer, because there are at least four questions there, and it is going to eat into Mrs. Cunningham's time.

Hon. Mr. Sorbara: I will try to answer that as best I can. I should tell you that the test of reasonableness, within the common and statutory legal system that we as Canadians share, is a test that goes back through hundreds and hundreds of years of common law. Our whole tort system of law is based on standards of reasonableness, not codified definitions of what is reasonable in a particular circumstance. That is very important to remember. The test of reasonableness in our legal system, in the common statutory legal system we have is very, very common.

You talk about referees, who these referees will be and how they will decide cases. Referees are simply individuals who are expert in resolving disputes between workplace parties. Many of them also serve as arbitrators who settle issues between trade unions and individual trade union members and management. In many cases, that arbitrator, acting as an arbitrator, is called upon to make a determination as to what was reasonable in the circumstances.

The bill itself does include, without limitation, some indicia of reasonableness, so the referee has a preliminary list to look at. But I reiterate: It is without limitation. Other factors may be included, because although there are standards within the workplace, there are unique situations within which each individual workplace finds itself.

Let me just make one more point. The initial right to refuse is without qualification. The employee, the worker, the retail worker does not need to say, "Look, I can prove my case of unreasonableness, so I am not going to work." His or her right is to say: "No, I do not want to work on Sundays. To me that is an unreasonable request." And that right stands, for ever and a day, until the employer says, "Well, look, in my situation I really need you to work at least one Sunday a week." If that employer chooses—

Mrs. Marland: One Sunday a week?

Hon. Mr. Sorbara: Let me just finish; I let you finish.

Mrs. Marland: How many Sundays are there in a week?

Hon. Mr. Sorbara: I am sorry, one Sunday a month.

If that employer then chooses to question the employee's determination that the work assignment is unreasonable, then the process is put into place. Then an employment standards officer is called upon to try to mediate a

settlement. If that process is ineffective, only at that point is a referee called upon actually to determine and resolve the dispute.

Mr. Chairman: I am going to halt with that, because Mrs. Cunningham has time which we would like to reserve for her. I am going to go to Mr. Hampton next. Mr. Hampton, you have about five minutes.

Mr. Hampton: I want to follow up first on a question Mr. Philip asked. I looked at the membership of the Coalition Against Open Sunday Shopping and I was able to find 11 trade union organizations: everything from United Food and Commercial Workers International Union locals, and there are several United Food and Commercial Workers locals; the united brewery workers local; Retail, Wholesale and Department Store Union workers; brewery workers; the Fur, Leather and Allied Workers Union; the Christian Labour Association of Canada and the Ontario Federation of Labour.

I also note that this membership list was handed out on April 18, 1988, at a press conference, and I also note that Sean O'Flynn of the Ontario Federation of Labour and Bill Reno of the United Food and Commercial Workers were at this conference, where the coalition said, "The government's proposed amendments, in terms of labour legislation, provides no protection to retail workers who want to spend time with their families instead of working. The government knows that. People might be fired if they object, and retail employees who do use the suggested complaints mechanism might be blackballed."

That is their assessment, and I want to follow up on Mr. Philip's question. Can you cite any bona fide labour organization, employees' organization or employees' association that has said otherwise?

Hon. Mr. Sorbara: No, I cannot. I am familiar with that list and, as I said to Mr. Philip, I have had fairly substantial discussions with a number of elected representatives and staff representatives within the trade union movement who have said to me, in effect: "Greg, forget it. You are not going to get us on side on the Sunday shopping issue."

If their public political position on the amendments to the Retail Business Holidays Act were not so cast in stone and the government had introduced Bill 114 as, for want of a better word, an independent piece of legislation, I would suggest to you that those same trade union members might have said, "Well, Sorbara, this is a good start; although it is not exactly the form in which we would want it, this does afford individual workers a very substantial degree of bargaining power to negotiate," because, after all, the trade union movement is as firmly committed as any organization or group of organizations in this province to the process of negotiation, to an environment where managers and workers can work out their differences. This bill, after all, does one simple thing: It readjusts the scales to give the retail workers some bargaining power in that process of negotiation.

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I hear you. I acknowledge that all the trade union organizations which are members of that coalition have, obviously, taken public stances against Bill 113—that is their fundamental position—but have simply not seen fit to endorse Bill 114. I believe that Bill 114, in the absence of the Sunday shopping controversy, would have been welcomed by the trade union movement. I do not speak on their behalf, but I still believe that.

Mr. Chairman: I want to give Mr. Hampton an opportunity to ask another question, if he has it. You have about two minutes left.

Mr. Hampton: I spoke, as Mr. Philip did, with a number of people who work in the retail sector who are not members of trade unions. I think you would admit that most of the people who work in the retail sector are not members of trade unions; there are all kinds of people out there who are not protected by a collective agreement.

Hon. Mr. Sorbara: That is right, yes.

Mr. Hampton: In smaller operations you usually start off with a salary of, say, \$5 an hour or \$6 an hour and hope to be promoted over time to the assistant manager's position or to be appointed to a position of responsibility.

One of the things that was put to me was this: If you have an employee who is a very junior employee and he objects to working on Sunday—and I was told this by owners, managers and employees—it is very unlikely that your system of mediation and referral will be used. The employer will simply note in his notebook that John Doe or Susan Smith does not want to work Sunday, and when the list for promotion or pay raises is drawn up, they will not be on that list. It is very simple. If you are an employer and you want to open Sunday, you do not have to get involved in this system of referral and mediation. You simply mark in your notebook that these people do not get a promotion, they do not get a pay raise. In a year or a year and a half, they will get the message and they will leave.

Hon. Mr. Sorbara: Yes, I hear the question. I guess I will begin my answer by posing a rhetorical question to you, then. You are saying on that basis that it is not a good idea to give workers this protection. To me that is like—just let me finish my answer. Look, we have just proclaimed a section of the Human Rights Code that calls on employers to make reasonable accommodation, but your argument, in the human rights area, would say it is stupid to pass that, because an individual whose day of worship is Friday and who asks for reasonable accommodation for that is going to have a little note made in the book.

You are saying to us, as a government, "Don't do that, don't give workers this protection, don't amend the Human Rights Code, don't solidify the Occupational Health and Safety Act to give workers more bargaining power." I am saying that individual trade union leaders have personally said to me, "Greg, there are ways in which you can make your bill better."

Mr. Hampton: Greg, what they are saying is that the protections that are delineated here are not worth the paper they are printed on. There are so many ways around them, so many ways through them that they are really not worth it. That is what they find so objectionable about this: that it pretends to protect people and it does not protect them at all.

Mr. Chairman: I think the point has been made loud and clear on both sides and I think it is just evoking further questions and answers. I am going to move to Mrs. Cunningham for three minutes.

Mrs. Marland: She has 10 left. I only took 10; I wrote it down.

Mr. Chairman: It seemed like 20, Margaret.

Mrs. Marland: It may have seemed like an hour, but I wrote it down.

Mr. Chairman: The hands on my Mickey Mouse watch are moving much faster, I think. In fact, I am not relying on my watch; I have an independent timekeeper here, the clerk. If she says three minutes—

Interjection: We trust the clerk.

Mr. Chairman: I am sure it will probably stretch to over three minutes.

Mrs. Cunningham: Maybe not. It depends on the length of the answers.

Hon. Mr. Sorbara: They are always too long; I acknowledge that.

Interjections.

Mr. Chairman: Maybe we should get on with it. The footnotes are taking up time.

Mrs. Cunningham: Just a comment and then some questions. After listening to the statement by the minister today, and certainly the exchange of questions and some answers, and with my observation of this anticipated onslaught of extended Sunday shopping, I really believe that the only reason the Minister of Labour feels compelled to bring this bill forward is to protect the retail workers of Ontario from the Solicitor General's Bill 113. The very fact that the minister feels compelled to bring forward this bill is proof the government does believe that the myths the Solicitor General referred to yesterday are indeed realities. I make that statement after listening carefully to the discussion yesterday and so far today.

If, indeed, the arguments raised by union groups and individual employees and employers are myths, as the Solicitor General referred to yesterday, then why do you, the Minister of Labour, think it necessary to bring forward Bill 114?

Hon. Mr. Sorbara: I think the reason some of my answers are intolerably long is that most of the questions have preambles that are—

Mr. Chairman: Now, now; let's not provoke—

Hon. Mr. Sorbara: —no, that are loaded with good material for response and that require a response.

Mrs. Marland: That is a matter of opinion.

Hon. Mr. Sorbara: No, I think the questions have been very good and raise a lot of very important issues.

Bill 114 is in very many respects a companion piece of legislation and has been considered as such not only within this Legislature but around the province as well. But I can tell you with complete sincerity that, as we were shaping Bill 114 within the ministry—and we spent a lot of time trying to determine how we could afford workers protections in respect of Sunday retail work, we went back over it time and time again; it is a short bill, perhaps because so much work has been put into it—we were not simply trying to deal with Bill 113.

We asked ourselves the question, "What is appropriate for the retail sector as a sector of the economy, not just Bill 113?" That is why this bill applies to retail workers who have been perhaps called upon to work on Sunday for years and years and years. That is why it applies to all retail workers and it stands alone. It is not simply designed to respond or somehow counterbalance or be an antacid pill to Bill 113.

It is a piece of what I believe to be effective labour legislation. It gives workers protection. It does come at the same time as Bill 113, because we made a political commitment, as we started down this road, to provide workers with appropriate protections, and I think we have done it; but we have said we have to go beyond simply Bill 113 and look at retail workers as a community, as a class of workers to whom it was appropriate to give protection in respect of Sunday work.

Mrs. Cunningham: Then in reality, the myths the Solicitor General referred to are problems you are anticipating, and this is a form of response to the widening—

Hon. Mr. Sorbara: Absolutely not. I think I have just said the exact opposite.

Mrs. Cunningham: No; well, the widening of Sunday shopping owing to the passage of Bill 113. That is what I thought you would say and that is what in fact you did say. You also said it is a companion for people who are open on Sunday now.

Hon. Mr. Sorbara: I said—

Mrs. Cunningham: So it could stand alone, if it stands alone.

Hon. Mr. Sorbara: I said it addresses Sunday work for every retail worker in the province.

Mrs. Cunningham: That is right. You said two things: You said it was a companion and that it could stand alone.

Mr. Chairman: I think we will leave what was said—

Mrs. Cunningham: I want to make sure.

Mr. Chairman: —to the people who listened to what was said on this.

Mrs. Cunningham: OK. Well, we have just had more responses, and that is fine.

Dealing, then, with paragraph 4, where you talk about the key provisions in your statement—I am trying to stay on your statement.

Mr. Chairman: This is going to be short, is it?

Mrs. Cunningham: The whole thrust of this bill—

Mr. Chairman: I am sorry, this is going to be short, Mrs. Cunningham?

Mrs. Cunningham: Yes.

Mr. Chairman: OK.

Mrs. Cunningham: The whole thrust of this bill is that an employee may refuse any assignment of Sunday work that the employee considers unreasonable. You have already been asked to give the committee a legal definition of "unreasonable."

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Hon. Mr. Sorbara: I have already—I am sorry?

Mrs. Cunningham: You have been asked to give the committee a legal definition of "unreasonable." You were asked that, so I will not ask that again, but that was my question. I will just look at Hansard and get your response. It was something about the courts always having to deal with—

Hon. Mr. Sorbara: Common law and all that.

Mrs. Cunningham: Common law and all that stuff, so I will go on with my next question. Was it easier for you to find this kind of response in a question from a person like myself to define the word "unreasonable" or "reasonable"? Was it easier for you to give that kind of response to that question around the word "unreasonable" than the Solicitor General's lawyers found for the definition of "tourist area"?

Hon. Mr. Sorbara: No. The test of reasonableness is deeply rooted in our common law and statutory law traditions.

Mrs. Cunningham: And what, therefore—

Hon. Mr. Sorbara: The test for tourism is not. Reasonableness is a very well accepted—

Mr. Chairman: It is probably a word that has gotten more judges into difficulty in terms of trying to describe it to a jury.

Mrs. Cunningham: So we therefore should be living with this definition or nondefinition of "unreasonable" or "reasonable" because of what you just stated, but no way could we live with any kind of definition of "tourist area"?

Hon. Mr. Sorbara: What I am saying is that, under Bill 114, the employee has an absolute right to refuse to work on Sunday.

Mr. Chairman: I think we are going to deal with that.

Mrs. Cunningham: No, we are getting too far.

Hon. Mr. Sorbara: The test of reasonableness will be called upon where the matter goes before a referee.

Mrs. Cunningham: I have one last question. I will save the others for when we are going through the bill, but this has to do with the statement.

Mr. Chairman: I am going to ask the other members if they will allow you to go beyond that, because I think, in fairness, you are several minutes over. We did agree on certain time limits. Mr. Hampton, do you have any difficulty or do any other members of the committee have any difficulty with one more question from Mrs. Cunningham?

Mr. Reycraft: To be reasonable here, you are going to have to decide whether or not the rules apply or the rules do not apply. There is no use—

Mr. Chairman: That is why I am asking you.

Mr. Reycraft: —in developing rules if the very day they are developed and the day after they are developed, you are going to ask us to cast them aside.

Mrs. Cunningham: As the minister pointed out yesterday, people come in and out. We had this discussion yesterday. If I could ask the question, it would take a lot less time than putting a motion forth and all that.

Hon. Mr. Sorbara: I promise to be brief.

Mr. Chairman: The minister promises to be brief as well, he says.

Mrs. Cunningham: Is it not true, therefore, that there is no firmer definition for "unreasonable" or "reasonable" than there is for "tourist area"; therefore, the logic that the Solicitor General uses for throwing out the select committee's recommendations is the very same logic we should use to throw out your Bill 114?

Hon. Mr. Sorbara: No, that is not true.

Mr. Chairman: That was short and sweet. Now I understand that the minister's staff will take us through using some overheads.

Hon. Mr. Sorbara: Are the good guys not getting to ask any questions?

Mr. Chairman: I am sorry. Mr. Keyes and Mr. Chiarelli did have their hands up. Mr. Keyes certainly did. Mr. Keyes, you first, and then Mr. Chiarelli.

Mr. Keyes: I just wanted to reiterate the response that the minister gave to Mrs. Cunningham's first question because I think that is the important part of it.

This piece of legislation is one that happens to be presented at the same time as Bill 113, but it is one, I suggest to you, that the government and your ministry would have put forward regardless of whether Bill 113 had been here or not, because it is my understanding that what it does is provide more protection for the retail workers of Ontario than they have ever had before.

I want you to reiterate and correct any of my misinformation if I have misinterpreted it another way. You did say we have 500,000 people who are involved in the retail trade. You did say that there are about 160,000 who now may be asked to work on Sundays. Is it not so that this new legislation, Bill 114, provides additional benefits and protections for those 160,000 workers who are currently subject, potentially, to work on Sundays? Do not all of the aspects of this legislation apply to them once it is approved, regardless of where we are with Bill 113?

Hon. Mr. Sorbara: That is absolutely right. Let's acknowledge, and I think Mrs. Marland and Mrs. Cunningham would acknowledge, that, at least theoretically, under Bill 113 municipalities could further restrict Sunday shopping: that is, they could reduce the number of stores that are opened as provided by the provincial framework.

For example, drugstores are allowed to be open if they are under a certain square footage. Under the current law, the municipalities have no control. Under Bill 113, as I understand it, municipalities could say, "No drugstores will be open in our community." That, theoretically, is a possibility; so also, theoretically, it is possible around the province that as a result of Bill 113, there will be a lot less Sunday shopping.

Notwithstanding that possibility, Bill 114 still affords protection to those retail workers who are working on Sunday, even if five years down the road it is one half of the number today, and if it is double the number today the protection is the same.

Mr. Chairman: Mr. Chiarelli.

Mrs. Cunningham: Has it even been asked for?

Interjection: I thought your time was up.

Mrs. Cunningham: That is a hard question, but no.

Mr. Chairman: We are going to move to Mr. Chiarelli. We will find that out over the course of the hearings, I am sure.

Mr. Chiarelli: It is more of a very brief comment, perhaps, than a question to the minister, and perhaps a question to Mrs. Cunningham. My comment basically is that it is very relevant that we are talking about reasonableness now and a definition of "reasonableness." We have just heard Mrs. Cunningham indicate that we will provide a definition of a tourism area. We have gone through first reading of this bill, we have gone through second reading of this bill, we have gone through countless petitions, and still we are being told by the opposition that we will provide a definition of "tourism" that is enforceable.

Mrs. Cunningham: With due respect, the opposition has never said it will. It never said it would do it.

Mr. Chiarelli: I am talking about reasonable.

Mrs. Cunningham: You do not want a definition. You have never asked for it.

Mr. Chairman: Mr. Chiarelli and Mrs. Cunningham, this is exactly why I want the questions to go through the chair. There will be no questions member to member, because this is what happens.

Mrs. Cunningham: Then, on a point of personal privilege, Mr. Chairman, I will respond.

Mr. Chairman: No, I am saying there will be none; it did not happen and will not happen again.

Mrs. Cunningham: Then is that going to be struck from the comments?

Mr. Chairman: He has read it into Hansard, and I am saying in future there will not be questions one member through another—they will come through the chair—for that very reason.

Mrs. Cunningham: So my responses were read in too, then?

Mr. Chairman: Now, do you have anything further, Mr. Chiarelli?

Mrs. Cunningham: No. Mr. Chairman, on a point of personal privilege: I did not say what I was just accused of saying and I want that in Hansard.

Mr. Chairman: Well, that is a matter of correcting the record.

Mrs. Cunningham: All right.

Mr. Chairman: We can read the record, and if the record is contrary to what you say you said, that is something you can correct at a later time.

Mrs. Cunningham: When can we read it?

Mr. Chairman: When the record is available. I am sure an instant Hansard can usually be obtained fairly rapidly. The clerk will send for one right now. Mr. Chiarelli, is there anything further?

Mr. Chiarelli: Perhaps I could just make a point of clarification.

Mr. Chairman: Through the chair.

Mr. Chiarelli: Through the chair. The point was made, by way of an interjection, that I indicated, "Where is the definition?" Mrs. Cunningham turned around and spoke to me and indicated, "We will provide a definition," referring to the tourism exemption. I am assuming she means a tourism exemption that can be defined and that is enforceable, because I think it is very important that when we talk in terms of defining "reasonableness," we talk in terms of reasonableness on all issues, not just on specific issues that it is convenient to use it on.

Mr. Chairman: Minister, it is my understanding that we will have overheads, and for that reason I am going to ask, are the overheads immediate?

Hon. Mr. Sorbara: Yes.

Mr. Chairman: I will ask that the lights be dimmed first of all, so that we can get a good look at this.

Hon. Mr. Sorbara: At this time, I would like to introduce to members of the committee Ron Saunders, who is the manager of the labour market analysis unit and who will describe in some more detail the workings of the bill, some of the policy issues and some of the data we were confronting as we crafted this piece of legislation.

Mr. Chairman: Can everyone see that adequately?

Interjection: No.

Mr. Chairman: I wonder if we could have—dare we put out all the lights in the room? Maybe we could have a few more lights put out.

Interjection.

Mr. Chairman: You will be able to see me, though. How is that? Is that better? That seems fine.

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Mr. Saunders: OK. What I propose to do then is go over some of the highlights of the bill, as well as some background information that is important to understand as context in which the bill has been introduced.

Mr. Pelissero: Do you have a handout?

Mr. Saunders: We have hard copy of the slides that we are planning to distribute.

Hon. Mr. Sorbara: We have the slides at the end of the presentation.

Mr. Pelissero: Thank you.

Mr. Saunders: First of all, I am going to take the committee through a little bit of background on the data on people already working on Sundays, how many people already work on Sundays in various sectors, and then discuss briefly the purpose of the bill, some key features of the bill, and our intent to provide fast-track administration of mediation services that may be required under the bill.

Mrs. Marland: Excuse me for a second. Is it because the screen is on an angle to project that we are getting a distortion?

Mr. Chairman: It is a little distorted to me. I thought it was just my glasses.

Interjection.

Mrs. Marland: It would. I think the screen just needs to be moved a little bit.

Miss Nicholas: Can't you read it?

Mrs. Marland: Well, it is not very pleasant.

Miss Nicholas: It's not focused; that's all.

Mr. Chairman: That's good. I can probably get rid of my glasses now.

Mr. Saunders: OK. We will talk a bit about the intent to provide fast-track administration if mediation services are required under the bill. We will talk about the hospitality exemption that will be brought forward.

Mr. Chairman: I wonder if you could speak up a bit. You are standing up and Hansard will have difficulty.

Mrs. Marland: He has a mike.

Mr. Saunders: We will review the current protections that are available with respect to Sunday work now and then provide a summary of the key features of the bill.

First of all, with regard to some background, and the minister has already referred to this, many people already work on Sundays. Our estimate is that about one third of retail workers are in stores that can open on Sundays under the current law. In other words, they fall under various exemptions that

would allow them to open legally under the current Retail Business Holidays Act.

We have listed some examples here. These are not exhaustive but they are some of the prominent examples: convenience stores, of course; pharmacies, subject to certain size restrictions, and the same with convenience stores; tobacco shops; antique or handicraft stores; gas stations, although municipalities in some cases restrict that opening. These are all kinds of retail establishments that can open legally under the current law.

It is also noteworthy that hotels and restaurants can, of course, open on Sundays under the current law; that is, as you go outside the retail sector. There are many nonretail establishments, hotels and restaurants among them, which employ about 280,000 people. Outside of that sector, of course, in manufacturing, there are many continuous shift manufacturing operations and essential public services that are available on Sundays. We estimate that overall about one third of nonretail employees may be expected to work on some Sundays. In fact, both in retail and outside of retail you have roughly the same proportion. About one third of the workforce would be employed in establishments that are open on some Sundays.

Mr. Philip: Now we will change the balance. Is it not a little bit like saying that if you have a boil on one cheek, you will be much happier if you have one on the other cheek, and then you will sit evenly?

Mr. Chairman: Let's try to avoid the footnotes and get on with this.

Mr. Saunders: Certainly, one purpose of the bill is to provide protection to retail workers who may be affected by Bill 113. It is also to offer meaningful and workable protection to all retail workers. The minister, of course, has already discussed this.

The reasonableness approach, which is indeed a key facet of the bill, is designed to encourage employers and employees to work out co-operative arrangements. The goal is to try to promote voluntary arrangements so that wherever possible work on Sundays will be voluntary.

Also, a key purpose of the bill is to try to prevent reprisals, to try to include strong provisions that will at least minimize the extent of reprisals that might be taken by employers against employees who do not want to work on Sundays.

We will then go to key features of the bill. I have just outlined them here. We will be discussing each of them in turn in the following slides. They are just listed here, really; that is, the employee right to refuse; the availability of mediation services in cases where there is a dispute on reasonableness or where there are cases where an employee believes that the employee has been improperly treated by the employer for refusing to work on Sunday; there is the referee process, where necessary; there are antireprisal features in the bill. There also is a clause in the bill that it is important to be aware of, an additional feature of the bill, that the bill would make Boxing Day or December 26 a public holiday.

With regard to the right to refuse, the basic provision in the bill is that an employee may refuse Sunday work that the employee considers unreasonable. Essentially, this right of refusal is absolute unless and until the case goes as far as a referee and a referee determines that, in fact, the Sunday work assignment is a reasonable one. Unless and until that point is reached, the employee's right to refuse is essentially an absolute one.

The vast majority of cases should be resolved without the need for a referee. That is consistent with our experience in other areas of labour legislation and it is also our view that the way in which the act is designed should promote resolution of disputes between the parties themselves, or if necessary, with the aid of mediation services. We do not anticipate that a large percentage of cases where there is an initial dispute will go as far as the referee stage.

Mediation services, of course, are available in cases where there is a dispute and the parties themselves are not able to resolve that dispute. The mediation would be provided by an employment standards officer to resolve disputes, as I have just mentioned, or to try to effect a settlement in cases where an employee believes he or she has been treated improperly for refusing Sunday work.

In other words, if an employee believes a reprisal has been taken for exercising a right to refuse unreasonable Sunday work—that reprisal need not be dismissal; we will come to that in a minute—if the employee believes that there has been any reprisal of any form for exercising the right to refuse, the employee could seek the intervention of a mediator and the mediator can try to resolve the issue by trying to effect a settlement between the employee and the employer.

There is another stage in the process that is available, if necessary. Specifically, referees will be resorted to in cases where the parties cannot reach a mutually satisfactory arrangement among themselves, and furthermore, the mediation stage has not been successful. If both of those things hold, then the case would go to a referee. The referee would then make a binding determination.

The bill sets out a number of guidelines for the referee in helping to judge reasonableness, but I should stress that these are guidelines. These are items the referee may take into account and they are not necessarily exhaustive, as the minister has mentioned previously.

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Let's just go through them quickly. The referee may take into account collective agreement provisions in respect of Sunday work, the existence of a premium pay arrangement for Sunday work, and the existence of a rotation policy; that is, whether or not the employer has instituted some sort of policy to share Sunday work among the employees. He may take into account the history of the work relationship—whether the employee has been regularly working on Sundays in the past is an issue the referee may wish to consider.

He may take into account efforts by the employer to hire additional staff. Has the employer made efforts to hire people to work on Sundays so that the rest of his staff can achieve a reasonable scheduling of Sunday work for them, or in other words, has the employer made efforts to meet the concerns of his regular staff by hiring additional staff to deal with the need to open on Sundays? He may take into account whether the employee was hired part-time specifically to permit reasonable scheduling of Sunday work for others—indeed, students could conceivably be hired in some cases to work on Sundays so that others do not have to work on Sundays—and the existence of an emergency—is there some urgent need for the employer to have staff on hand?

Again, these are guidelines and are not exhaustive, but they are itemized in the bill.

Mr. Philip: Is bankruptcy an emergency?

Mr. Saunders: The bill has antireprisal features. The bill states that the employer may not take any reprisals against an employee who refuses Sunday work that the employee considers unreasonable. Again, it is important to remember that this right of refusal is essentially absolute, unless and until there is a determination by a referee that the work assignment is a reasonable one.

It is also important to recognize that the protection, as I mentioned briefly before, is not only against dismissal, but really against any form of reprisal. It is explicitly in the bill against not only dismissal, but also discipline, suspension, intimidation, coercion or the imposition of any penalty on the employee.

If there is a case where an employee believes a reprisal has occurred and it is taken to an employment standards officer for mediation and that employment standards officer is unable to affect a settlement between the employer and the employee, then that case would go to a referee and the referee may order a remedy, including reinstatement and/or compensation.

We have really gone over the features of the bill that relate to the right to refuse, but as I mentioned before, there is an additional feature of the bill, and that is with regard to Boxing Day. Currently, Boxing Day is the only retail business holiday, other than Sunday, which is not a public holiday under the Employment Standards Act, and the municipal option in Bill 113 would apply to all retail business holidays, not just Sundays.

What the bill would do is bring Boxing Day under the Employment Standards Act. By doing that, by making Boxing Day, or more precisely, December 26, a public holiday, it then provides a number of features that apply to public holidays: the entitlement for most workers to a day off on that day with pay and the right to refuse work on that day. There are some exceptions to that; for example, hospital workers. It is also possible that an employee or his agent or a union, for example, could agree to substitute another day for the public holiday.

That is one provision in the Employment Standards Act. But there is a sort of basic right to refuse, with certain flexibility provisions and certain exceptions. There is also provision, of course, for premium pay for work on public holidays. These various features, which apply to all public holidays, would then apply to December 26 if the bill were passed.

We do not think this particular provision will have a big impact on employers, because the evidence we have looked at indicates that it is in fact quite common to provide a paid holiday on Boxing Day. It is not universal, certainly, but it is a relatively common practice to provide employees with a paid holiday on that day.

As I mentioned briefly before, there will be fast-track administration for dealing with cases arising under the bill. In most cases, we do expect that the employer and the employees will work out co-operative arrangements among themselves. It is our belief that when people look at the process, look at the nature of the protections in the bill, employers will recognize that it makes sense to get together with the employees and try to work out a scheduling of Sunday work that is acceptable to all parties.

We believe co-operative arrangements will be the norm, but where there are disputes and where mediation is sought, applications will be dealt with on a priority basis. The target the ministry has set is that the employment standards officer would report on the results of mediation within four weeks.

There is a plan to exempt the hospitality industry—that is, hotels and restaurants—from the provisions of the bill. The plan is to do that by regulation. The hospitality industry is not generally regarded as a retail industry, as retail business establishments. Moreover, that industry does have a sort of special protection that exists now, which is the One Day's Rest in Seven Act, requiring a break period of a day in every seven days for people employed in that industry.

There are also a number of provisions, protections currently in force that are relevant to the issues being discussed by the committee. One is the Human Rights Code. Under the Human Rights Code, there is a requirement for employers to provide reasonable accommodation to the religious beliefs of their employees, as long as this will not bring undue hardship on the employer. For example, if there were a case where an employee was a member of a bona fide religion that required rest on a particular day, not necessarily Sunday, then the Human Rights Code would say the employer has an obligation to reasonably accommodate that practice.

There is also the amendment to the Employment Standards Act that was provided by Bill 51, passed last January, which deals with cases where stores open illegally; that is, if stores that are not legally entitled to open on Sunday open on Sunday, then there is an absolute protection against dismissal in such cases.

Also relevant are the hours-of-work provisions of the Employment Standards Act, that is, the basic provisions setting out the maximum work week. There are in fact regulations in respect of maximum hours per day and per week. The basic standard is one that sets maximum hours at eight per day and 48 per week in most sectors.

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There are various flexibility arrangements around this. There are possibilities for permits that can extend this somewhat. But it is important to recognize that even in cases where a permit is held, there is still a right to refuse work at those points; that is, an employee has a right to refuse work beyond eight hours per day and 48 hours per week, even if the employer holds a permit or the industry holds a permit that would allow work hours beyond those trigger points. So that is also relevant in an indirect way but a significant way to the issues before the committee.

Just to sum up, what the bill does is provide protection for all retail workers, including the many retail workers who already work on Sundays. The ministry's view is that the bill provides a framework which is both fair and flexible; that it is workable, meaningful protection, with mediation services available; that the antireprisal provisions are strong; and most important, that the bill is designed in a way in which employers will be encouraged to work out mutually satisfactory, co-operative arrangements with their employees.

That completes my remarks.

Hon. Mr. Sorbara: A brilliant presentation. Thank you.

Mr. Chairman: I might add for future reference that in my trip outside, I discovered that the people who are trying to telecast this to the public outside had some difficulty when we put out the additional lights, so we may have to bear with not being able to see the screen here quite as well in order to allow them to do a proper transcribing of what is taking place here.

Mr. Philip: As Mrs. Smith is here now, may we invite her to join Mr. Sorbara at the head table so we can ask questions of either of the ministers, as there is overlapping on both bills?

Interjections: No.

Mr. Philip: Mr. Sorbara does not want Mrs. Smith's help, is that it?

Hon. Mr. Sorbara: No, that is not the case at all. I think my piece of legislation deserves its day in the sun, that is all.

Mr. Chairman: You have had the overview, and I have the start of a list. Mrs. Cunningham first, Mr. Chiarelli, then Mr. Hampton.

Mrs. Cunningham: Basically, clarifications and a specific question. Looking at the list under subsection 39k(2), we are looking at what the referee should be using as guidelines. I suppose, in order to settle a dispute. I see something I think is missing there.

Mr. Chairman: I might add that they are not all-inclusive, if you read, "without restricting the generality of the foregoing."

Mrs. Cunningham: I understand that. But to my way of thinking—I think you stated that most of the retail workers do not have collective agreements.

Hon. Mr. Sorbara: That is the case, yes.

Mrs. Cunningham: So if we were to go back to square one and you were trying to solve a problem with somebody who did not have a collective agreement, I would think it would be wrong to put that down as item 1. The very first thing any employee who is working in a retail business establishment would probably have is some kind of contract or letter of agreement. Usually, they are not very formal, but they do talk about some basic conditions of work. I would think that would be the first thing you would want to put down, because I think there is a principle involved in this list.

So I offer that as a suggestion and something for you to look at. In looking at the order here, the principle I see is that everybody who has a problem has a collective agreement. So I would ask you to look at that.

Hon. Mr. Sorbara: It is an interesting comment and I understand the perspective that brings the comment forward. It well may be that some workers who are not the beneficiaries of a collective agreement would read this legislation and say, "Maybe I should have a collective agreement," and maybe that would not be a terribly bad thing.

I think there is some wisdom in putting that at the top of the list, and that is this: The thrust of the bill is that Sunday work, to the greatest extent possible, ought to be voluntary, and the workplace parties themselves

ought to work out, to the greatest extent possible, the arrangement that suits those workplace parties. That is what the negotiation of a collective agreement is all about, and if the workplace parties sit down with, say, a chain of stores that happens to open on Sunday—take Shoppers Drug Mart, for example—and work out how they will deal with Sunday work, like they deal with all other issues of hours of work and shifting and all that stuff, that is the best possible solution.

That is perhaps the reason that is (a), but let me at the very same time make it very clear that there is no particular priority, there is no weighting. The terms of a collective agreement would be as important and as significant to a resolution if it were (g) as if it were (a).

Mr. Philip: May I ask a supplementary on that?

Mrs. Cunningham: See if mine is the same.

As a person who has been very much involved in labour relations for a long time, I look at these in order of priority, and the collective agreement would be the first thing I would look at. As a person who has tried to work with many people where they do not have a collective agreement, I think the terms of employment or the little letter you have that clearly states that you are going to be working some Sundays, which I think would be a very important condition of work for anybody—my comments still stand, and I think that should be in there. I think this particular legislation is almost saying that if you do not have a collective agreement and there is an argument, you had better get one. I am sure that is not your intent.

I will tell you why I am making that comment. One of my other questions earlier was going to be: Has anyone looked at the cost? What kind of research went into looking at the 116,000 employees, and how many of those people had problems with their employers around working on Sundays that you are aware of that have been brought to the government's attention?

Hon. Mr. Sorbara: It is difficult to analyse that, because currently there is no protection, so we do not get calls at the employment standards branch about that sort of thing. We certainly do get hours-of-work calls; that is: "My employer has asked me to work 70 hours this week. What does the law say about that?" The law says he or she can only require you to work 48 hours.

My own sense, based on the research that the ministry has provided and the anecdotal experience I have as an MPP and as a minister, is that in very, very many places of business, there are already voluntary arrangements. Employers who are historically open on Sunday have a part-time workforce that is interested in working on Sundays. After all, most stores in the kind of marketing that we do, at least in the Toronto economic zone, and I think generally around the province—that is, a nine-to-nine kind of marketing strategy—open about 78 hours a week. So there really are two shifts of employees. Our sense is that in many instances the Sunday workforce is a part-time, weekend workforce.

Mrs. Cunningham: I have made my statement and you have made your comment, and I think we both agree that at least there is a point.

Hon. Mr. Sorbara: I hear your point.

Mr. Chairman: I think Mr. Philip had a supplementary.

Mr. Philip: I have a supplementary from way, way back.

Mrs. Cunningham: Save it.

Could you just tell me what "premium pay" means?

Hon. Mr. Sorbara: "Premium pay" means pay that is above and beyond the normal rate of pay for that particular job assignment. I would refer to Nick to determine whether there is a more substantive definition in the Employment Standards Act.

Mr. Ignatieff: The Employment Standards Act provides for time and a half for overtime.

Mrs. Cunningham: Right now, if someone were to work on December 26, would he automatically get premium pay for that day?

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Mr. Ignatieff: December 26?

Mrs. Cunningham: Boxing Day.

Mr. Ignatieff: No.

Mrs. Cunningham: They do not?

Mr. Ignatieff: Boxing Day is not a statutory holiday at the moment under the Employment Standards Act. We propose to make it so.

Mrs. Cunningham: Yes, so automatically, because of this legislation, anybody who works on December 26 would get premium pay?

Mr. Ignatieff: Yes.

Hon. Mr. Sorbara: As that person would get premium pay if he worked on Labour Day, Christmas Day, Canada Day or the other statutory holidays as defined in the Employment Standards Act.

Mrs. Cunningham: Presently, the employees of this government of Ontario take a holiday on December 26. Is that correct?

Hon. Mr. Sorbara: I would assume that some of them do not.

Mrs. Cunningham: No, I think that is a statutory holiday for government employees now.

Mr. Ignatieff: It is not statutory.

Mrs. Cunningham: Not statutory?

Mr. Ignatieff: It is bargained between the government, as employer, and the union and is included in the collective agreement.

Mrs. Cunningham: So right now it is included as part of the collective agreement. Do they get premium pay for that day?

Mr. Ignatieff: Yes.

Mrs. Cunningham: Government employees get time and a half for December 26 now, as a bargained position?

Mr. Ignatieff: Yes.

Mr. Chairman: Is that if they work or if they are off?

Mr. Ignatieff: If they work, they get premium pay.

Mr. Chairman: If they are off, they just get regular pay?

Mr. Ignatieff: Yes.

Mrs. Cunningham: If they are off, they get regular pay?

Mr. Ignatieff: Yes.

Mrs. Cunningham: OK, but we are saying in this bill that if a retail worker takes the day off, we have to pay him time and a half. Correct?

Mr. Ignatieff: Yes.

Mrs. Cunningham: That is not a bargaining position between the employee and the employer then, because of the status of where we have December 26 sitting. I think we should be looking at that. I am not sure the little retail guy can afford to pay time and a half because of where we place December 26.

Hon. Mr. Sorbara: The retail employer is required to pay time and a half to his employees for all statutory holidays under the Employment Standards Act. This act simply adds December 26 as a statutory holiday, and we do not think that is unfair.

Mrs. Cunningham: We may get some information on that as we go on the road tour.

Mr. Ignatieff: I could simply say that Mr. Saunders outlined that our information is the present practice indicates that a very substantial number of people presently enjoy Boxing Day as a paid holiday, subject to either collective agreement or employer practice. When I say "substantial," Mr. Saunders, correct me if I am wrong, but I think it is in the 80 per cent level, something like that.

Mr. Saunders: It varies, of course, by size of firm. For firms that have, say, more than 20 employees, the data we have suggests it is very widely prevalent. For a smaller firm, the data are more scanty, frankly. One could anticipate that for smaller firms it will not be so prevalent, but the data are more scanty for smaller firms.

Mrs. Cunningham: But it is the time and a half that they are not always getting now. They get a holiday, but their employer does not have to pay them time and a half by law?

Mr. Saunders: Right now it is not a public holiday.

Mrs. Cunningham: Right, but they do get it off, it is negotiated with their employer. I just wanted to see the rationale for the premium pay thing, and I think I understand it.

The last question has to do with the bona fide religion, and this is the Human Rights Code, which has nothing to do with this legislation. This is background information to do with the slides; it is there anyway. I am wondering what your experience has been with people now who say, "I am a Christian, I go to church on Sunday, I have a regular attendance at church and I am being asked to work on Sunday." Have you had brought to your attention a lot of requests by people saying they are not going to work on Sunday because they are not required to by the Human Rights Code? Is that something you are aware of?

Hon. Mr. Sorbara: I, unfortunately, do not have statistics on that. I am not sure if Mr. Saunders does or not, or perhaps we might want to call upon Penny Dutton, who is the director of the employment standards branch.

Mr. Chairman: Ms. Dutton, if you are going to answer that, you had better come forward.

Hon. Mr. Sorbara: Just for the record, I will state that we do not have those statistics available here at this time. My own sense is that there are not a lot of those sorts of complaints coming into our office. I do not want to speak on behalf of the Ontario Human Rights Commission.

Mrs. Cunningham: The reason I asked the question is that, as we have the presentations across the province, we may get church groups. We could be advising them that if they have people who are regularly attending church, they will not be required to work. That would be a bona fide reason not to have to work on Sunday; people who go to church.

Hon. Mr. Sorbara: Let's make it very clear that we are talking about two separate pieces of legislation.

Mrs. Cunningham: I understand that.

Hon. Mr. Sorbara: Under the Human Rights Code, the reasonable-accommodation provision requires an employer, not just in the retail sector but in any sector, to make reasonable accommodation should that employee, for religious reasons, not find it appropriate to work on Sunday or any other day for that matter, where there is a religious reason for refusing to work.

Our bill, the bill that we are looking at in this committee, deals specifically with Sunday and gives a great deal more power to the worker to negotiate and deal with the possible assignment of Sunday work.

Remember that under the human rights legislation, the employer is simply mandated to make a reasonable accommodation, but there is no automatic right to refuse the assignment of Sunday work.

Mr. Chiarelli: Basically, does your ministry or do any of your ministerial officials have any reports or studies from other jurisdictions which indicate what happens to hiring or work practices when there are Sunday openings? What are the dynamics that are put into effect?

Do employers tend to go to part-time employees on Sundays? Do existing employees work longer hours? Do you have any type of reports or studies from other jurisdictions as to what happens in this area?

Hon. Mr. Sorbara: We have looked at a large number of jurisdictions.

Obviously we have specific legislative provisions in all Canadian jurisdictions. We have looked at a number of US jurisdictions as well. In addition, we have looked at European jurisdictions to see what those various jurisdictions do in respect to the regulation of, first of all, Sunday openings, and second, worker protection for Sunday openings.

I have been through all that material. If you have specific questions on specific jurisdictions, we can provide the material that you are looking for.

Generally, in Canadian provinces, Sunday retailing is regulated in one form or another; witness amendments in Alberta and British Columbia. Saskatchewan now has introduced a piece of legislation, as my notes say, to delegate regulation of Sunday closings to municipalities.

Mr. Philip: What about New Brunswick?

Hon. Mr. Sorbara: New Brunswick is another case in point, as the member for Etobicoke-Rexdale interjects.

Mr. Philip: They decided this was the wrong route to go and rescinded it.

Hon. Mr. Sorbara: What was interesting as we looked at European jurisdictions is that in many, many instances European jurisdictions use a variety of municipal option. That was interesting to me because many people came to me and said, "Toronto, a world-class city, should be like Paris, Rome and London and be closed on Sunday."

I wondered immediately how those large cities were regulated. What our investigations discovered is that in some European jurisdictions there is a national framework which pretty much dampens the extent to which retailing is done. In many other jurisdictions, Italy being one, France being another, it is up to the municipality to decide. Paris closes on Sunday by choice, more or less.

It is interesting, just as a footnote, that I recently had a holiday in Paris and on Sunday there was just about the same level of retailing as exists in Toronto.

Mr. Philip: Today?

Hon. Mr. Sorbara: Today. They have a local option. It was not all tourists; some of them were in back streets. There was a variety. Most things were closed under the Parisian local option.

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Mr. Philip: The patterns of shopping, though, are completely different. People do not get into their cars and go shopping.

Hon. Mr. Sorbara: The evidence we have is that there are some jurisdictions which have worker protections a little bit like we are proposing in Bill 114, but this is, in the Canadian experience, really ground-breaking legislation. It is the first Canadian example where we have a specific protection for retail workers in respect of Sunday.

Mr. Chiarelli: I have just one supplementary. Have you been able to find, in any of your studies or research, that where there are Sunday

openings, local option or otherwise, employees are forced into or end up working more hours per week?

Hon. Mr. Sorbara: You have to remember that most jurisdictions have a law like our Employment Standards Act which governs total hours per week of permissible work. In our case, it is 48 hours. So, even if stores are opening on Sunday, they simply cannot say, "You're going to work an extra eight hours," because most unionized workers work in unionized establishments, perhaps 37 or 38 hours per week; in other establishments, perhaps 40 and sometimes verging on 48. Additional retail hours where workers are already working the maximum 48 hours per week require additional workers.

Mr. Hampton: The first question I want to ask is a supplementary to Mr. Chiarelli's. I recall, back when I used to practise law, reading a quotation from a famous international labour lawyer, saying one ought to be careful when one takes labour law from one jurisdiction or one part of the world and then tries to use it as a model for a society in another part of the world.

Would you agree with that statement, that one ought to be careful when one takes labour law systems from one place, one society, and tries to transpose them into another?

Hon. Mr. Sorbara: I did not practise in the area of labour law and I would not want to give my stamp of approval to that statement, but it sounds, on the face of it, reasonable. I would add that it still is appropriate to look at what a variety of other jurisdictions are doing in this area.

Mr. Hampton: Would you agree that maybe what we ought to look at first are the difficulties or the experiences of some other Canadian provinces in what they have had to deal with in terms of Sunday working and Sunday shopping?

Hon. Mr. Sorbara: Once again, in designing a piece of legislation such as Bill 114, I think it is appropriate to get as much information as one can reasonably gather, as you are trying to craft and do the fine-tuning of the policy initiative and then the legislation.

I think Bill 114 is a home-grown solution. I think we have understood the realities of the retail sector, the retail worker and the retail employer and created a piece of legislation that uses procedures that workers are familiar with—employment standards officers, referees, mediation and arbitration—and uses that structure in the resolution of whatever disputes may arise in a bill that gives workers new rights. This is very much an Ontario piece of legislation.

Mr. Hampton: I am aware of that. My position has always been that this has not been a labour problem; this is a political problem. It is a political problem for your party. This is a neat way of trying to change a political problem into a labour problem.

Hon. Mr. Sorbara: I would have been proud to introduce this bill in the absence of any amendments to the Retail Business Holidays Act.

Mr. Hampton: Is it fair to say, in the overall scheme of things, that the bill of the Solicitor General (Mrs. Smith), Bill 113, will loosen the restrictions on Sunday shopping? Is that what you anticipate, that it will loosen the restrictions?

Hon. Mr. Sorbara: That is very hard to predict. It really is difficult to predict. Let me just tell you, as I watch the municipal electoral process heating up in my own riding and in my own area, I see most of the municipal candidates saying they are not in favour of, and if elected would not be arguing to broaden, Sunday shopping in the town of Vaughan and in the town of Richmond Hill. I hear that coming from other areas of the province as well.

I do not know what local preferences would be, locality by locality, 20 years down the road. That is why we did not design a tag-end bill to Bill 113. We designed a piece of legislation that could be and will be effective in any environment, whether there is an expansion or a contraction of Sunday shopping.

People's tastes really do change, and the way in which we organize ourselves as communities changes very much. Thirty years ago there were no convenience stores or milk stores. We got our milk on the front porch, and we did not get it on Sunday, by the way. God, try to close down the local convenience store and take away my opportunity to buy a little bit of whipping cream to put together Sunday dinner and not have Sunday dinner be a disaster, and you will have real trouble. People want that.

I cannot predict what community preferences are going to be 10 years from now.

Mr. Hampton: How many new employment standards officers is the Ministry of Labour going to hire to enforce this legislation, to be available as mediators, to be available as investigators?

Hon. Mr. Sorbara: We do not anticipate that there will be a very substantial new case load imposed upon our employment standards officers as a result of this legislation. We may be wrong in that regard, and obviously we will make appropriate administrative provisions within the ministry should that be the case.

Mr. Hampton: I guess I have a problem with that, because the business people and the labour people who are part of the Coalition Against Open Sunday Shopping say that at present it typically takes four to six months to have a simple complaint under the Employment Standards Act adjudicated. I checked with a few labour lawyers and they say that sounds reasonable. These are simple fact-finding things, usually—four to six months. How do you meet your four-week turnaround in here?

Hon. Mr. Sorbara: That is why the bill provides—correct me if I am wrong—the specific word in the bill is "forthwith," which is a legislative word for a fast-track administration process, and we are preparing ourselves in order to deliver on that commitment.

It may well be that in estimates two years down the road, when this bill has had some experience in regulating Sundays in the workplaces of this province, you might be saying to me: "Look, your budget needs to be increased. You need to develop more resources because there are too many delays in this area."

We have done the analysis. I do not think we are trying here today to examine what the administrative machinery of our government should be in implementing this, but to discuss the principles in the bill.

Mr. Hampton: I think the employees in the province, and probably a

lot of small business people, will find that pretty cold comfort. If they are already sitting with a four- to six-month backlog or a four- to six-month time period to have a simple resolution dealt with and you are going to put this on them now, this is fairly complex legislation. The process you are going to have people go through—a complaint, a mediation, and finally a referral to a referee—seems to be fairly complicated. How you plan to deal with that without hiring more staff and how you are going to operate it efficiently, I find really difficult to understand.

Hon. Mr. Sorbara: It may appear on the face of it to be complicated. In employment standards terms, the process is completely familiar to any lawyer who works in the area. A labour lawyer, for example, understands the complaint procedure. It is the same procedure that we use for other areas. The mediation process is the same, and the referee process has been a feature of the Employment Standards Act for many, many years.

Mr. Hampton: That is exactly my point. If this is as complicated as the system you have already and the system you have already has that long a turnaround time, how are you going to do this in four weeks?

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Hon. Mr. Sorbara: The system that we have already is not complicated. It certainly is dealing with a number of cases. We deal with hours of work, unjust dismissal, overtime pay and holiday pay. Some of these issues are far more complex than Sunday work, by the way. Just one point on that: We have organized ourselves in a way that we believe we can deliver on this basis. Penny Dutton is the director of the employment standards branch, and she may want to make a further comment on that.

Mr. Hampton: I will leave that for now. I want to go on to something else.

The surveys that the Canadian Federation of Independent Business and the Coalition Against Open Sunday Shopping have done indicate that a lot of your retail establishments have one to 20 employees and are not unionized. Right?

Hon. Mr. Sorbara: Yes.

Mr. Hampton: Their position is that under the new legislation, if employees are asked to work on Sunday, where you have the sort of close-knit small business, most of them will accede to it. Most employees will say, "OK, I will work Sundays," or "I will work some Sundays." That is their feeling. That is their view. How do you say no? How, as an employee, do you say no to someone you have worked for for 10 years, who besides being your employer is probably your close friend, somebody you play golf with, somebody you are perhaps close to socially? It is their feeling that most employees will accede.

My question to you is, what happens to the reasonableness argument if, say, two of 20 employees at some point say no, but the other 18 employees have acceded because that is the nature of the employment relationship in small, nonunionized businesses? How can the other two employees argue that it is reasonable to reject this? What happens to the reasonableness of the objector then? I think that is a pretty hard burden to overcome. I think you have lost before you have started.

Hon. Mr. Sorbara: I believe there are just far too many assumptions in the scenario that you present. First, taking that same shop, it is probably

the case that the business is operating six days a week. If all of those people are working there on a daily basis, then all of them are working the maximum number of hours that is permitted under the Employment Standards Act. If the business decides to expand by another eight or 10 hours, it needs to hire a new workforce.

Mr. Philip: Oh, come on.

Hon. Mr. Sorbara: Mr. Philip says, "Come on." That is the case.

Mr. Philip: Try to do that in hardware, where you need people to answer questions, or in a Canadian Tire store or in jewellery shops or in any of those. They cannot hire part-time people.

Hon. Mr. Sorbara: Canadian Tire stores are open typically 80 or 90 hours a week already. That means they have a variety of workforces, some of them part-time students working Thursday night, Friday night and Saturday. It is a complex business, organizing the workers. My own sense is that the intimate retail operation involving 15 or 20 employees is the kind of situation where an arrangement will be worked out. The workforce will sit down with the employer and they will discuss how they are going to handle Sunday work. The difference is that under this arrangement with this bill, the employer cannot order you to work on Sunday. He certainly can ask. The bill gives you, as a retail worker, the right to refuse and then to sit down and discuss the extent, if any, to which you will be working on Sunday. That is a fundamental new, important right.

Mr. Hampton: In a sense, I agree with you. I do not think your legislation is going to be used at all, because I think any reasonableness argument—

Hon. Mr. Sorbara: I thought you were just going to stop when you said you agreed with me.

Mr. Hampton: I think any reasonableness argument that an employee can mount is quickly going to disappear, and it is going to disappear for the kinds of reasons that the coalition and a lot of small business groups have cited. Most employees will simply accede to the request to work on Sunday, and those who do not want to work on Sunday will find a terrible burden in saying that their refusal is reasonable.

Let me go on from there. Would you agree with me that the legislation that exists right now, the Retail Business Holidays Act, is labour legislation; that is fundamentally what it is?

Hon. Mr. Sorbara: I would not characterize it as inherently labour legislation.

Mr. Hampton: Would you say it is primarily labour legislation?

Hon. Mr. Sorbara: Not having jurisdiction over the act and not having read every section of it last night, I would not want to comment on whether I thought it was primarily labour legislation. I know what the act does: It regulates the right of or the prohibition against opening a retail business on Sunday. That has an impact, obviously, on the workforce, just like any other piece of legislation that would regulate hours of work.

Mr. Hampton: Let me put it to you this way: When the legislation was

last defended in court by your government; by the Attorney General (Mr. Scott)—the Attorney General, I understand, took a very active role in the defence—its constitutionality was defended on the basis that it is primarily labour legislation. In fact, the first paragraph of the factum says:

"The Retail Business Holidays Act was enacted in 1975 to establish a common pause day for retail workers to spend with their families. It was the intent of the Legislature to 'slow the growing commercialism and materialism' in society and to encourage recreation and leisure activities on these common days of rest."

It goes on from there, citing that it is primarily labour legislation. I understand that is the basis on which it was upheld by the court, that it is primarily labour legislation. The goal, as I understand it, that was stated by the Attorney General is there was a need for a legislated common pause day. It says:

"There is an ever-increasing trend in retail business and its ancillary services to open on statutory holidays and Sundays. There is an accompanying erosion of the opportunity for retail workers to participate in leisure activities with family, friends and others. A uniform pause day was needed to allow the pause day of retail workers to coincide with that of their school-aged children, spouses and friends and community events."

Would you agree with me that it was primarily labour legislation?

Hon. Mr. Sorbara: You and I, as lawyers, know that in the drafting of factums there is a lot of material inserted in a factum on the basis that a number of arguments will be made by counsel to a court. Look, I think what is important is not what the Attorney General put in his factum; what is important is the judgement of the Supreme Court of Canada in upholding the legislation.

Mr. Hampton: They said it is primarily labour legislation.

Hon. Mr. Sorbara: I have not recently reread the judgement and I only read snippets of it when it was first rendered. It certainly did uphold the legislation, and it was important in Ontario that the act be upheld. Other than that, I do not want to comment on the basis of any factum being presented to a court that a piece of legislation is or is not primarily something or other.

Mr. Hampton: What the Attorney General said at the time, and I would assume that was the position of your government, was that the primary role of the Retail Business Holidays Act was to protect the common pause day. That was the primary role.

Hon. Mr. Sorbara: Again, I do not want to comment on the Attorney General—

Mr. Hampton: The reason for the common pause day was not religious; it was a labour reason, to give workers a day off with their families.

Hon. Mr. Sorbara: My understanding is that there are a number of arguments made in that factum and that there were a number of arguments made before the court. The important thing is that the court upheld the legislation.

Mr. Hampton: That is right, and upheld it on that basis.

Let me ask you this then: Is the goal of your legislation to protect workers on Sundays as much as possible?

Hon. Mr. Sorbara: Our legislation certainly is labour legislation. The goal of our legislation, as I have said—and I am sure Mr. Saunders said it more effectively than I in his presentation—is to make, to the greatest extent possible, Sunday work in the retail sector voluntary. The way in which we achieve that objective is to lodge with retail workers the right to refuse work. At the same time, we provide a system to resolve, as effectively as possible, disputes that might arise in that area.

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Mr. Chairman: Mr. Hampton, before you continue, as you may recall, the minister indicated that if he was going to be expected back here this afternoon, he would have to make arrangements with reference to another engagement. Can you tell me if you are going to be much longer, so we can allow the minister to have someone make those arrangements, or can we assume that we will probably break at about 12:30 p.m.?

Mr. Hampton: I have just one further question, that is all.

I think if you are really serious about protecting Sunday workers, there is a much easier way to go about it than this bureaucratic hodgepodge. I do not think your legislation is going to be used. I think employers will find a way around it. I think employees, especially nonunionized employees, will not want to use it. It places them at too much risk. I think if you are serious about protecting Sunday working, other provinces have shown a very simple way. Why not simply require that all Sunday work be paid at time and a half or perhaps double time and simply limit the number of employees who can work in an establishment on a Sunday?

I was in Winnipeg on the weekend. Howie's drugstores, huge drugstores which are in fact supermarkets—

Mr. Chairman: Which we have established.

Mr. Hampton: —simply put a sign on the door saying: "Due to the government's determination to uphold its no-more-than-four-employees limitation in a business establishment, we will not operate on Sundays. We are too big. We cannot control our store with only four employees."

Why not something like that? Why not get out of this whole chicanery and subterfuge about what is a tourist establishment and what is not a tourist establishment and simply say: "We're going to effectively limit Sunday shopping and we're going to protect Sunday workers. The way we'll do it is, first, to make it expensive if you want to operate on Sunday and, second, to limit the number of employees"?

Hon. Mr. Sorbara: I have read the Manitoba legislation a number of times and I understand the way it operates. I would not be the least bit surprised if two, three or four years down the road in Manitoba, they are not revisiting their legislation in the area of regulating hours, sizes and number of employees on Sunday. That is a prediction.

Mr. Philip: Only if there is a Liberal government.

Hon. Mr. Sorbara: I would like to say that is an inevitability, but I will not.

Mr. Chairman: On that point, we will move on to Mrs. Marland, again recognizing the question I put to Mr. Hampton about whether we can finish by 12:30 or whether the minister should make other arrangements.

Mrs. Marland: I am sure we could if the minister gives us short answers.

Mr. Chairman: If you ask short questions, I am sure he will give you short answers.

Mr. Keyes: He would not want to be short with you, Mrs. Marland.

Mrs. Marland: One thing I must say which is encouraging about this minister's presentation today is that at least his ministry seems to know a ball-park figure for the number of employees this bill is dealing with. That is certainly a refreshing change from yesterday, when the Solicitor General did not know, in answer to my question, how many retail establishments there were in Ontario which could be affected by Bill 113 and Bill 114. So I commend your staff for their research.

I wonder if, in the research, in writing your genius piece of legislation, to use your own words, you went into the cost of this bill. Certainly, we recognize the tremendous cost of Bill 113.

In Bill 113, we are dealing with the cost of bylaw enforcement. We were told that both of these bills were needed because the present bill does not work and the present legislation is unenforceable. It is interesting to note that the government thinks these bills will be any more enforceable. Obviously, in order to do that, what we are doing is transferring the cost from policing a provincial statute to enforcement of a local municipal bylaw. In terms of yesterday's bill, I recognize this is still a provincial enforcement.

Has your ministry estimated the cost of your mediators and referees for Bill 114? Will those be in the professional description that would require lawyers? Have you estimated the cost in terms of your own staff? We are very concerned in the Progressive Conservative caucus about the fact that the Liberal government has added 8,000 employees to the Ontario civil service in the last three years. I would like to know whether you know how many more employees you are going to have to add to enforce your Bill 114.

Mr. Chairman: With that short question, perhaps you can get a short answer from the minister.

Hon. Mr. Sorbara: I want to begin by saying that we do not anticipate the kind of increased workload that would require the increased staff that will give you more opportunity to make your allegations about increased size of the civil service in Ontario.

Mrs. Cunningham: So we are having some impact.

Hon. Mr. Sorbara: Of course. In fact, I think your party is doing so well you should stay in opposition for years and years.

Mrs. Cunningham: Just keep on listening and maybe we will keep you where you are. It is easy.

Hon. Mr. Sorbara: We could agree on that. Right away I will sign on on that.

Let me ask Penny Dutton, who is the director of the employment standards branch, to give you more detail on what we anticipate.

Ms. Dutton: From the minister's standpoint he has indicated that this will be administered within the current resources of the employment standards branch.

The branch right now stands at roughly 170 total staff. That includes support staff as well as officers. In terms of officers based in the field, we are talking roughly 100-plus officers scattered throughout Ontario in 11 regional centres. There are sub-officers as well.

The total budget of the branch, all aspects of it, is approximately \$8 million for this fiscal year. As the minister has indicated, it is anticipated this will be administered within that.

The case load projections in this area were, I think, as the minister has indicated in his policy branch, "not anticipating a significant blip in case load." These cases will be fast-tracked. Of our current resolutions, over 60 per cent of them right now are within 60 days. That is pre-adjudication. That is settlement by employment standards officers. In this case they would be moved to a target date of four weeks and then stuff would move to the referee process.

With regard to the referee process itself, the current panel of referees, I think, is roughly 35 referees. It is a panel that is administered by the office of arbitration. Most of them—

Mrs. Marland: Who pays them?

Ms. Dutton: There are statutory fees that are set by order in council. They do other work as well in the arbitration area.

Mrs. Marland: But who pays the fees?

Ms. Dutton: The government pays the fees. They are per diem fees.

Mrs. Marland: So the cost of the mediators and the referees will be borne by the taxpayers of Ontario?

Ms. Dutton: Yes.

Mrs. Marland: And the mediators and the referees are outside of—I presume, Mr. Chairman, you would like me to direct my questions to the staff person?

Mr. Chairman: If you look at me and ask the question, I will consider that it is being directed through the chair.

Mrs. Marland: The cost of the enforcement of this legislation is purely on the shoulders of the Ontario taxpayers for the mediators and the referees who will be necessary.

You have answered the question that the employment standards officers, within their current numbers, will be able to deal with this legislation. So we would assume then that every time there is an appeal by an employee who does not want to work on Sundays, that takes that employment standards officer to that case.

Which means that if you are not going to add staff then, I wonder what other employment standards are going to take longer to be addressed or processed and what other appeals will now have to take a second seat in precedence to this new legislation, if you are not adding staff.

I think it is fair to say—

Mr. Chairman: Are you asking for a response?

Mrs. Marland: No. I think I got that answer, but I am leading to my next question. I think it is very important to respond to the minister to tell him it is not a myth that the Liberal government of Ontario has added 8,000 employees in the last three years to the Ontario civil service; it is in fact documented in its own budget.

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To ask a question of the minister that I feel we have to get an answer to: We now know that the cost of both these pieces of legislation will be borne by the Ontario taxpayers, either at the municipal level through bylaw enforcement officers which all the municipalities are going to have to hire to enforce Bill 113. Now, dealing with Bill 114, we also know who also is going to be paying for that. Unfortunately—

Mr. Chairman: I hate to interrupt, but just to put that in perspective, yesterday we were told the municipality got to keep the fine if it was a municipal—

Mrs. Marland: Yes, Mr. Chairman, we were told the municipality got to keep the fine. We were also told the upper limit of the fine was \$50,000. An average bylaw enforcement officer, I think, earns between \$30,000 and \$35,000. We know that in the city of Mississauga, the initial startup cost of enforcement of Bill 113 will be in the range of a bottom figure of \$200,000 a year for bylaw enforcement officers. That figure is documented by the Mississauga city council.

Looking at this cost, unfortunately, the whole problem with the Sunday shopping, Sunday working situation we are dealing with in Ontario today is that the public does not know, the public has no concept of what the cost is going to be down the road for years to come to comply with the enforcement of both of these pieces of legislation.

I really want to ask the Minister of Labour again because he is, I would have thought, the person who is protecting the people who work Saturdays, Sundays and Monday through Friday in this province. If, as the Minister of Labour, he is really concerned about the people who will have to work on Sundays, how can he ignore what has been presented to his government? How can he be proud of what his government is doing on the subject of Sunday working? Can he tell me why his government has ignored the thousands of petitions from employees and employers alike?

I think that is what has been lost in this whole debate, that it is not only the people who work who are not supportive of the opportunity to work on Sundays, but it is also the people who employ those workers. We have heard from employers and employees alike who are not interested in working on Sundays. It has been well-documented from all the unions. It has been well-documented from the major large employers in this province that they are not interested in open Sundays or working on Sundays. So how is it that your

Liberal government has chosen to ignore the thousands and thousands and thousands of voices that have said, "Please don't change anything in Ontario today"?

Mr. Chairman: As the Speaker often says, the question has been well asked.

Hon. Mr. Sorbara: I think that was a great question; I am just still looking for the question mark in it. The question is a wonderfully rhetorical one and I will not take too long to give a mildly rhetorical answer.

Within our legislation, I think we have done a great deal of listening. It was not an easy task to try to find a way to craft rights and protections and administrative frameworks that really would appropriately service retail workers in this area.

In the very long preamble to your question, you talked about administrative costs, that once again these were going to be borne by the government. Far too often, in my short career as a politician, I have heard people say, "We can't do that because it is going to cost too much to run." People use that in the area of health and safety in the workplace. "We can't have that right because it is going to cost too much to enforce." "We can't do that in environmental protection because it is going to cost too much to enforce."

I think you have to separate the questions. One is, what rights are appropriate and what policy is appropriate? The second one is sound administration of government.

There will be a time when you will come and examine me, as Minister of Labour, in my estimates as to whether or not we have done a sound job in administering Bill 114 after it is enacted. We are going to have a little bit of experience. As I said, we do not know whether five years down the road there will be a great deal more retailing done on Sunday or a great deal less. Who knows?

Although the business of larger administrations has to be raised, obviously, and sometimes it is raised in a political context, I would hope that as you consider the bill during these committee hearings and as you undertake your study in your provincial tour, you would be looking at this principle, and I hope you will understand that the principle is a simple one: giving workers additional rights. It may well be that you have insights into this bill that will be the subject of an amendment; I would be interested in hearing that.

Some, particularly from the left, will say those rights are not strong enough. Others will say workers should not have those rights, should just be forced to work on Sundays and that the bill should never have been introduced. I think this bill is a middle ground. It does not take either side. It helps the workplace parties into an environment where they themselves will resolve their differences. That, by the way, is the theme of what we in the Ministry of Labour are going to be doing in a lot of other areas, helping the workplace parties work out these questions in an environment of fairness and relatively equal bargaining power.

Mrs. Marland: I do not think the minister answered the direct question as to how it is the Liberal government has chosen to ignore all of the numbers of employers and employees who have said, "We do not want to deal

with the subject of Sunday work because we do not want to employ people on Sunday and we do not want to work on Sunday." Why have you ignored that?

Hon. Mr. Sorbara: I do not think we have ignored that. We have acknowledged the reality that there are very many retail workers working on Sunday now, and Bill 114 applies to them. We have acknowledged the reality that the people of the province want some degree of shopping availability now.

Mrs. Marland: You did say 160,000 may work on Sunday, not 160,000 do work. From the overhead projections, you said as the law exists, 160,000 may work. You have not actually said how many are working. In any case, it is going to be less than the ones who may, so the percentage who are working on Sunday is nothing in comparison to what will happen now.

Hon. Mr. Sorbara: I disagree with that, and only time will tell. Notwithstanding that, I reiterate that I think we have listened very carefully. We have done a great deal of consultation. You read your mail and I read mine. I think we have crafted in Bill 114 a bill that does reflect the listening we have done. As I said, it is rather new and innovative in Canada. I would not be surprised to see other provinces adopt it down the road, but only time will tell.

Mrs. Marland: It is new in Canada. You may think it is innovative. I think it is unnecessary when you have a bill that depends and pivots on the words "reasonable" or "unreasonable," and another section refers to "the existence of an emergency situation." You said you are replacing the current bill because the current legislation does not have protection for employees. The current legislation, you have said, is full of loopholes.

I would suggest that your bill, Bill 114, has very huge caverns in it whereby people can slide through, if they wish, under the category of clause 39k(2)(g), the existence of an emergency situation, the existence of the choice of what is reasonable and unreasonable and so forth. It is a crafted bill, to use your own words; I think it is very crafty, but it does not achieve what needs to be achieved for the employees who do not want to work on Sundays in Ontario.

Mr. Chairman: Is there a question there?

Hon. Mr. Sorbara: There is no question mark in that at all, so I will say, "No comment."

Mr. Chairman: All right. I think we have had fairly extensive questions of the minister. I thank you and your staff for attending.

I ask the committee to just stay around briefly. We have a couple of items that are really housekeeping to deal with before we adjourn.

Mr. Hampton: I do want to say one thing to the minister. I want to congratulate the minister actually on being able to come before the committee and make a statement that confined itself to what we are trying to do legislatively, instead of trying to state some rather pejorative things about Ontario society, such as were contained in the minister's statement yesterday.

Mr. Chairman: Let's not revisit yesterday. We are dealing with today.

Mrs. Cunningham: I agree. Nobody wants to think about yesterday.

Mr. Chairman: No. I think we should confine it to each day. Otherwise, when we get to the witnesses, we will be going back to the witnesses of the day before. I think we should try to move ahead and so on.

Thank you very much, minister. We appreciate you and your staff coming.

Mrs. Marland: That is a compliment and I agree with it.

Mr. Chairman: We will be having a brief discussion here.

We have one item, which I have dealt with, and which I trust you will have no difficulty with. One of the witnesses apparently appearing on Monday wishes to have its own photographer here. I do not see any difficulty with that. Any problem? I have made the decision: no problem.

Mr. Philip: The usual procedure is that—

Mr. Chairman: As long as they do not interfere with the committee.

Mr. Philip: Unless there are documents on our table or something that we do not want photographed, then that is fine. Other than that, it is OK.

Mr. Chairman: The second thing is that apparently the—

Interjection.

Mr. Chairman: Who is it? We will find out. The standing committee on the Legislative Assembly is apparently trying out a new type of seating arrangement. It will be in a circle. That is to make us all feel closer together. I trust you will have no difficulty with that. There was one problem with it. There were only two seats for witnesses and very often we get more than two witnesses sitting there. They have arranged for four seats for witnesses. I just tell you that for your own benefit.

Interjections.

Mr. Chairman: I have lost total control here. When you come in and see the circular arrangement, you will then know why it is happening. OK? It was not just one of my ideas.

That is all there is for the committee. If the subcommittee can stay just briefly, we can clear up a couple of items. We stand adjourned until 10 o'clock on Monday, August 8, here.

The committee adjourned at 12:34 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, AUGUST 8, 1988

Morning Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Farnan, Michael (Cambridge NDP) for Mr. Hampton

Jackson, Cameron (Burlington South PC) for Mr. Cureatz

Pelissero, Harry E. (Lincoln L) for Ms. Poole

Roberts, Marietta L. D. (Elgin L) for Ms. Hart

Clerk: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Canadian Retail Hardware Association:

Ross, Tom, Executive Director

Douglas, Blair, President

Card, Graydon, Board Member

Garland, Dale, Board Member

Legate, Bob, Past President

From the Retail, Wholesale and Department Store Union:

Eleen, John, Research Officer

From Shoppers Drug Mart Ltd.:

Bloom, David R., Chairman, President and Chief Executive Officer

Haberman, Barrie, Owner, Shoppers Drug Mart, York Mills Shopping Centre

From REAL Women of Canada:

Hartmann, Rita, Chief Policy Adviser; President, Ontario Chapter

Anderson, Judy, Vice-President, Ontario Chapter

Landolt, C. Gwendolyn, National Vice-President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, August 8, 1988

The committee met at 10:03 a.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act.

Mr. Chairman: I recognize a quorum with representatives from all parties.

Mr. Kanter: John Ritchie, who is the executive director of the policy and program development division of the Ministry of the Solicitor General, is present and is going to be present this week, I believe. I wonder if it might be appropriate if he sat in one of the chairs at the head of the table in case there are technical questions directed to him.

Mr. Chairman: Is that agreeable to all committee members? Seeing no disagreement, Mr. Ritchie, you can do that.

I would like to welcome the first deputants here, the Canadian Retail Hardware Association. We appreciate your coming and giving of your valuable time. Certainly, everyone who appears before the legislative committees is voluntarily coming here.

Just to give you some idea of the procedure we have adopted, we have allocated 30 minutes to each group. You can use all or any part of that for your presentation. It would be desirable, however, if there would be time left over for committee members to ask questions, if they have questions. If you wish to make your presentation somewhat brief—we have a copy of it before us—that will allow an opportunity for each of the members to ask questions.

Because of the tight schedule we have, I am sure the members will agree that the time that is left over, as a matter of fairness, will be divided equally among the three caucuses, but that will be the amount of time that is allowed. We are going to stick to 30 minutes so that we can carry forward and get as many deputants before us as possible.

If whoever is going to present the brief would like to introduce the other people for purposes of Hansard, please proceed.

CANADIAN RETAIL HARDWARE ASSOCIATION

Mr. Ross: Thank you, Mr. Chairman. Ladies and gentlemen, good morning. My name is Tom Ross. I am the executive director of the Canadian Retail Hardware Association. If you do not mind, if I can prevail upon you, I will wait to introduce the other members of our delegation until they have their little bit to say in our oral presentation instead of introducing them twice.

We thank you, first of all, for the opportunity you have afforded us to meet with you today and to put our views before you. We have filed a printed brief that you have before you. It differs somewhat from the oral presentation you are going to hear over the next few minutes, but we commend the written brief to you for your perusal at your leisure and hope you will take the opportunity to read it.

When we have completed our oral statement—and as the chairman has mentioned, we anticipate we will conclude the oral statement in plenty of time—there will be time for questions, and anybody in the delegation will welcome questions.

First of all, to lead off our oral statement, I would like to introduce to you our current elected president of the Canadian Retail Hardware Association, Blair Douglas, who is on my right. Mr. Douglas operates a store, unfortunately, not in Ontario but in the town of Caledonia, Nova Scotia.

Mr. Douglas: Before our delegation makes specific comments regarding Bills 113 and 114, I would like to say a few words about our association.

The Canadian Retail Hardware Association, CRHA, is a national, voluntary trade association representing independent retailers in the hardware, building supply and do-it-yourself-centre sector. We have 1,800 member-stores across Canada and 800 member-stores in Ontario.

Our members want to remain closed on Sundays. Surveys of our dealers show that more than 95 per cent are opposed to Sunday and holiday retailing, and no issue is of more concern to our dealers.

A typical CRHA dealer is a small retailer who is open six days a week and works 10 to 12 hours a day. A large number of our dealers work in their stores every minute they are open. Provincial legislation prohibiting nonessential retailing on Sundays guarantees these members one day a week off work when they can spend quality time with their families.

Due to the highly competitive nature of retailing, the vast majority of our members would be forced to open Sundays if the competition were open Sundays. Our members would be forced to open for economic survival, not because of any desire to open on Sundays.

Retailing in our industry involves a high level of service to our customers. When people buy products in a hardware store, they invariably ask for advice from highly trained full-time staff. Understandably, these full-time sales staff want to spend Sundays with their family members. If stores are forced to open Sundays, then full-time staff may have to work Sundays, or the level of service will suffer.

For our members and their families, the issue is not Sunday shopping; it is seven-day-a-week work. One can only imagine the additional burdens this would place on the quality of family life for our members.

Please be assured we are not insensitive to the needs of our customers. We would be the last to suggest that the right of people to shop when they choose to do so should be unreasonably restricted. But our member stores in Ontario are open for business, on average, 69 hours per week. We think that the space of those hours allows any Ontario resident convenient shopping times.

Our association is fundamentally opposed to the municipal option for Sunday and holiday retailing. We believe wide-open Sunday shopping is the inevitable byproduct of the municipal option. As far as we are concerned, one cannot support the principle of a common pause day and also support the municipal option.

1010

Mr. Ross: For the major points of our brief, I would like to introduce to you an Ontario hardware dealer, Graydon Card, who is sitting on my left. Mr. Card is a hardware dealer who operates a store in Stouffville, Ontario, not too far north of here.

Mr. Card: Thank you. While I appreciate the opportunity to appear before the committee this morning, I must say, on behalf of our 800 dealers across Ontario, we are very disappointed with the Peterson government's Sunday shopping legislation, we are very disappointed with the government's policy reversal on Sunday shopping and we are very disappointed with the government's lack of public input prior to the December announcement of its intention to introduce the municipal option.

The December 1 announcement by the Solicitor General (Mrs. Smith) that the province intended to transfer authority for Sunday and holiday retailing came as a complete surprise to us. Earlier last year, Joan Smith rejected the municipal option when she sat on the all-party committee studying retail store hours. During last fall's provincial general election, the Premier (Mr. Peterson) indicated his support for a common pause day. Prior to the Solicitor General's announcement last December, there was no public discussion regarding fundamental changes to the Retail Business Holidays Act.

We believe the domino effect is real. Because of the highly competitive nature of retailing, when retailers in one municipality open Sundays, neighbouring municipalities will be forced to permit Sunday shopping to prevent the loss of retail sales and jobs. How can a small municipality eager to increase its tax base resist the offer from a developer to locate a major retail development in its municipality on the condition that Sunday shopping be permitted?

The municipal option contained in Bill 113 is a prescription for wide-open Sunday shopping in Ontario. If this provision is passed in its present form, wide-open Sunday shopping will be inevitable in most Ontario communities within a few years because of the domino effect. Based upon the experience in British Columbia and the overwhelming opinion of Ontario municipal politicians, anyone who believes the municipal option would not result in a domino effect, particularly in Ontario's densely populated Golden Horseshore, is not being realistic.

The requirement in Bill 113 that Sunday shopping bylaws must be passed at the regional level will only delay the inevitable. If we want an idea of what would happen in Ontario with the municipal option, we should look at the experience in the greater Vancouver area since 1981, when British Columbia adopted the municipal option. The domino effect occurred in the greater Vancouver area as municipality after municipality, including the city of Vancouver, passed Sunday shopping bylaws in response to the enactment of Sunday shopping bylaws in neighbouring municipalities. Today, Sunday shopping is a reality in virtually every municipality in the greater Vancouver area.

We firmly believe that all evidence shows a definite cause-effect linkage. Indeed, many of the questionable tourist exemptions which the Solicitor General uses to prove that the present law is flawed are simply instances of municipalities reacting to pressure from vested interests in the business community. If the municipalities have the power, they will come under pressure to use the power and they will use it. Neighbouring communities will be forced to react in order to protect the competitive interests of their retail constituency.

The municipal option means that economic and commercial considerations take precedence over concerns about quality of life. The municipal option means that decisions are made for the wrong reasons. Municipalities will permit Sunday shopping to protect their retailers. Retailers will open to survive, and many people will have little choice but to work on Sundays.

People will not buy more hardware if stores are open seven days a week; they will just buy it at different times. That means, of course, that as a retailer I will have to staff my store for an extra day without extra sales to offset that extra cost.

For me and my store—and I am not much different from a lot of others—if I must open on Sunday to meet competition, I will certainly do so. I know it will cost me money. I can only recover those additional costs in two ways: by raising prices or by lowering the level of service available in my store. In either case, my customer will lose.

The Solicitor General has stated that the domino effect will not happen. I do not believe that, but let's consider for a moment what the province would be like if municipalities did not fall into line. We would have a patchwork of municipal laws. Each difference between bordering municipalities would entrench competitive inequities in law. Is it a good system of law that tells one retailer he cannot open while a competitor is allowed to operate with impunity, simply because he is located across a municipal boundary? I think the answer is obvious.

What about Ontario consumers if this patchwork is allowed to exist? Perhaps the government is prepared to publish a directory of who is open and who is not to relieve some of the confusion.

Section 5a of Bill 113 purports to protect retail tenants who choose not to open on Sundays. This protection is illusory for a number of reasons. First, due to the inequality of bargaining power between retail tenant and landlord and the one-sided nature of retail leases, it is not that difficult for a landlord to find some excuse for early termination of a lease of a tenant who declines to open on Sundays.

Second, section 5a offers no practical protection to the retail tenant whose lease has expired and who wishes to renew his lease. A landlord can simply rent the space to a retailer whom he feels will be more co-operative.

Ontario's current Sunday closing law, the Retail Business Holidays Act, has withstood numerous legal challenges by a few retailers who have opened on Sundays against the law. The Supreme Court of Canada has ruled that Ontario's current Retail Business Holidays Act is valid provincial legislation regulating retail store hours which gives retail employees a common pause day.

One of the reasons the Retail Business Holidays Act has survived legal challenge under the charter's provisions for freedom of religion and of conscience is that the act is consistent with the principle of religious neutrality.

In contrast, section 5 of Bill 113 violates the principle of religious neutrality, and if Bill 113 is enacted in its present form, it is possible the act may not survive a charter challenge.

Bill 114 is designed to give retail employees protection from unreasonable Sunday work. The interaction of Bills 113 and 114 means not only that thousands of small business owners will be forced to open Sundays due to a combination of the municipal option and competitive pressures, but also that many business owners will have to work in the stores on Sunday because they may not be able to find suitable Sunday staff or afford premium wages for Sunday help.

Neither bill does anything to recognize the rights of small business operators to a guaranteed common pause which gives them one day a week off to spend with their families. This legislation discourages people from starting small businesses, which are the engines of economic growth in our economy. Bills 113 and 114 will discourage children from taking over a small retail business from their parents. They will look at their parents working seven days a week and say, "Who needs it?"

I believe it is possible to improve Ontario's Retail Business Holidays Act with constructive amendments along the lines suggested by the 1987 select committee report. However, enactment of Bill 113 in its current form would not improve Ontario's Retail Business Holidays Act, because it is a prescription for one of two conditions: either a whole pattern of patchwork laws differing from one municipality to another, which will mean countless numbers of competitive inequities entrenched in law; or wide-open Sunday shopping. Neither is necessary nor desirable.

I would urge members of the committee to recommend to the government the creation of an advisory body, comprised of representatives from all interested groups, to suggest constructive amendments to the Retail Business Holidays Act.

Mr. Chairman: Are there any further presenters?

1020

Mr. Ross: Much has been made over the term of life of this committee, since the committee was empowered to have hearings, about what has been going on in other provinces. I know that at one time there was an expressed desire by the committee to travel to some of these other provinces and see it at first hand. I do not know whether you are going to be able to do that because of your time constraints, but we did bring in two retailers from those other points to tell you what it is like in their provinces. They are both past presidents of the Canadian Retail Hardware Association.

First I would like to introduce, from Moncton, New Brunswick, Dale Garland.

Mr. Garland: New Brunswick has tried the municipal option for the past three years and it has been a failure. Earlier this year, Frank McKenna's Liberal government of New Brunswick introduced legislation that would eliminate the municipal option. The New Brunswick government is eliminating

the municipal option in response to complaints from New Brunswick municipalities that do not want the authority for regulating Sunday and holiday retailing.

The domino effect did not occur in New Brunswick because most communities in New Brunswick are separated by significant distances. However, the municipality of St. Stephen did pass a Sunday shopping law in direct response to an enactment of the Sunday shopping law in neighbouring St. Andrews, a community located 20 miles away.

While the New Brunswick government intends to eliminate the local option, municipalities will be able to permit certain classes of retail businesses located in provincially designated tourist areas to open on Sunday.

I understand that one of the Ontario government's rationales for introducing the municipal option was due to the perception that some municipalities had abused the spirit of the designated tourist area exemption under the Retail Business Holidays Act. The New Brunswick government intends to address the tourist area issue by using a provincially designated body, not local municipalities, to determine which areas of the province are in fact tourist areas for the purposes of permitting certain classes of retail businesses to be open on Sunday.

As a retailer in New Brunswick, it seems to me to be a rational approach. Retailers in New Brunswick feel very fortunate that the province has announced its intention to eliminate the municipal option.

Mr. Ross: For the final bit of our oral presentation, we have a hardware dealer from Edmonton, Alberta, Bob Legate.

Mr. Legate: I own and operate two building supply home centres in Edmonton, where Sunday shopping has been legal since 1985. While both I and my employees would prefer to remain closed Sundays, due to competitive pressures both stores are open Sundays.

One of the most tragic consequences of Sunday shopping in Alberta has been the loss of a common pause day and its impact on family life. As a personal and specific example, my daughter and her husband both work in retailing in Edmonton and they are able to spend only one day each month together, due to conflicting schedules because of Sunday shopping.

Alberta and British Columbia, the two Canadian provinces which have virtually wide-open Sunday shopping, except in some smaller communities, have the highest divorce rates in the country. While I am not suggesting there is a direct relationship between Sunday shopping and divorce, no one is going to convince me that Sunday retailing enhances the quality of family life.

In Alberta, where there are almost no restrictions on Sunday and holiday retailing, malls in Edmonton and Calgary are open 363 days of the year, every day except Christmas and Easter. In the near future, some Alberta malls—I would suggest the West Edmonton Mall—will be open 365 days of the year.

The lesson is simple: If it is legally possible to open, some will open and other retailers must react to protect their market share.

Sunday retailing has meant that the retail sector has become a less desirable occupation for employees. Since the advent of Sunday shopping in Alberta, there has been a significant increase in the proportion of part-time

jobs in retailing, at the expense of full-time jobs. As a result, the level of service to the consumer has declined in the retailing industry in Alberta, and it is not surprising that the Alberta chapter of the Consumers' Association of Canada opposes Sunday shopping.

My personal experience has been that Sunday shopping has not resulted in increased profits. Weekly sales are simply spread over seven days instead of six. It may be that some Alberta retailers have enjoyed increased sales as a result of Sunday shopping; however, I suggest they are simply taking business away from their competitors.

Frankly, after having lived with Sunday retailing for three years, I would not recommend it. All the free enterprise and civil libertarian arguments in the world will not help an individual who cannot spend Sundays with his family because he is working.

Mr. Ross: We are quite prepared now for questions.

Mr. Chairman: Thank you. Before we start, I should indicate that we have roughly 10 minutes. I am going to allocate that among the three caucuses, so I hope you will take that into consideration. You can make statements, if you wish, but that will be part of your time.

Mr. Philip: It has been suggested that in British Columbia there has been, as a result of the municipal option and eventually the domino problem, a gradual shift of merchandising in terms of volume, not necessarily in terms of profits, from the smaller malls to the larger malls and from the smaller retailers to the larger retailers who can afford that larger mall. I wonder if you have any information on either British Columbia or Alberta to confirm whether or not this is in fact happening and whether you see this as a serious threat to the hardware store operator who operates in the small, local community mall, be it in Rexdale or in a small town in Ontario.

Mr. Ross: I do not have statistics I can quote for you and I really am not that much aware of the shift in business from small malls to larger malls.

There is quite a noticeable effect, I think, which everybody seems to acknowledge, in that there is a shift of business to low-service types of retailers. For example, the discount department store's personnel costs are a lower percentage of its sales. Therefore, it can afford to open a lot more easily than a high-service type of retailer, such as our members happen to be. Yes, there has been that shift, certainly, that we have recognized, from high-service retailers to low-service retailers, simply because they are the ones that are able to spread their costs over a longer work week.

Mr. Legate: I can comment on what has happened in Edmonton, particularly in that situation. You see very few independent retailers, whether they are in men's clothing, ladies' clothing or this type of thing, in the malls now. They are all national corporations. There still are the small retailers in the small strip malls and they are surviving, but in the larger malls, very few, if any, can be found.

Mr. Philip: Are they doing less business as a result of Sunday shopping? Is the volume switching from them to the chains in the larger malls? That was the gist of my question.

Mr. Legate: I would not suggest that it is a switching. They still have their own clientele in the smaller malls. What I am saying is that in the larger malls, you have now eliminated the independent retailer, and those people who were in there can no longer afford to operate stores there.

Mr. Philip: I think you make an excellent point on section 5(a), that there is really very little protection. There is no landlord and tenant act for a store owner in a mall. If somebody is unco-operative, then his lease can simply not be renewed or his rent can be doubled or tripled. I know of cases where that has been done because the mall owners did not like a person, for whatever variety of reasons.

Mr. Chairman: I am sorry, we are going to have to move on.

Mrs. Cunningham: My comment is directed to Mr. Ross and his colleagues.

I would like to thank you very much for an excellent presentation. I do not have a lot of technical questions because I think you have covered all of the points you have made very well. I would especially like to thank your colleagues from Alberta, New Brunswick and Nova Scotia for coming here, because it is a dilemma of this committee as to how we get good information. I will take my few moments to really sincerely express my thanks.

My question is more of a political nature. We find ourselves in a position on this committee of travelling about the province. As I look at the groups that are to present, I can pretty well guess what their points of view will be. I am wondering if you have any advice for me; that is, if you were to make recommendations to this government, what specifically would your two major recommendations probably be, given the odds against us—I am talking about the numbers in the House—and the fact that the Solicitor General has made the statement that she is not prepared to make any major changes. I am wondering what advice you can give to me and I will try to carry it through since you are the first presenters.

Mr. Ross: That is a very open-ended question, Mrs. Cunningham.

Mrs. Cunningham: Yes, it is.

Mr. Ross: I do not know. In view of the government majority in the House, of course, the question you raise is very problematical. All we can hope is that people on the other side of the House from where you sit are going to recognize that there are perhaps pitfalls in this legislation that they had not recognized previously, and hopefully come to their senses before it gets third reading and becomes proclaimed.

I think all of us agree it is a very diverse province, but the fact remains this does not relieve the provincial government from setting provincial standards in some areas, just as it does with minimum wages. The provincial government does not say at all that because the employment patterns are different in Sudbury and in Niagara Falls, each of those communities should set the minimum wage for those communities. We recognize, I think, in this province that provincial standards are necessary. That is really what we are asking for more than anything else. I am afraid I cannot tell you how you should proceed to bring that about politically. I am sure nobody else can.

Mrs. Cunningham: It is a dilemma. To Mr. Legate, I will always remember your words, "tragic consequences," and the points you brought to us

today when it comes to the lack of recognition for a common pause day. I want you to know that it will remain with me for ever because I think you made some excellent points on the quality of family life, and I thank you.

Mr. Kanter: Like my colleagues, I would like to thank Mr. Ross for assembling a cross-Canada group of people from the hardware industry. I think that has been quite helpful. I would just like to ask two questions.

First, with respect to the provincial framework, you referred, Mr. Ross, to a provincial standard. I would just like to know if you are aware of and in support of the provincial framework that, "No person carrying on a retail business in a retail business establishment, shall sell or offer for sale any goods...or admit members of the public thereto, on a holiday," which includes Sunday.

That provincial standard remains very much part of the legislation and also there is the fact that enforcement of that provincial standard would be substantially improved by this legislation, by higher fines, by the right to obtain an injunction, by the right to take profits into account, by the right to take newspaper ads into account. Are you aware of those provisions and are you in support of those provisions in this bill?

Mr. Ross: Yes. I have to say that we are in support of those provisions. What we do not support is the fact that the ability to subvert those provisions is handed to the municipalities.

Mr. Kanter: Let's go on and talk about the local opinion, which you are referring to, because you referred, of course, first to the province.

Mr. Ross: Yes.

Mr. Kanter: At the current time, there is a local option in effect in Ontario. Many areas are open. About 100 municipalities in the province are open. I understand there is a specific exemption for a hardware store in the town of Cobourg. I understand that other municipalities, such as Huntsville, Muskoka, Port Hope, Markham, some of them not too far from Stouffville, are open. At the moment, the way the current law is drafted, any municipality can, without notice or hearings or any other provisions, establish a so-called tourist exemption and open up stores, hardware stores or others.

In the spirit of constructive criticism with which you come before this committee and the opportunity you say you would like, do you have some suggestions for this committee as to any procedure that should be involved before a municipality should be able to open on Sunday? Would you have any constructive proposals along those lines?

Mr. Ross: If I might make a quick reference to the Cobourg situation, because you mentioned the hardware bylaw in Cobourg, it is an excellent example of the way the tourist exemption under the current act has been misused by municipalities. There are three hardware stores in Cobourg. Two of them were against opening on Sunday, but one wanted to open on Sunday and that one that wanted to open on Sunday had a friend on council. On a dark night or a slow day on town council, they passed the bylaw and all three hardware stores were allowed to be open. No hardware stores are open in Cobourg today. The one that wanted to open is out of business and the other two guys close. They still have that bylaw on their books, but it is not effective.

I am quite aware there have been significant difficulties with the tourist exemption provision of the current bill. Indeed, I think the Solicitor General uses as one of her rationales for this new Bill 113 the fact that the current act is not working because of abuse of the tourist exemption. My only suggestion would be that if it is broke, you fix it; you do not throw it away, which seems to be what the current government is trying to do.

I think there are all sorts of ways it could be administered by the province. There is reference to the Ontario Municipal Board, for example, before a municipality could pass a tourist exemption bylaw, or better definitions of what a tourist exemption really is or all of the many things that we have been talking about all of the time Mr. Keyes was Solicitor General and we were talking to him about all the difficulties of enforcement of the act.

I think obviously there are holes that have to be plugged and the biggest hole is the tourism exemption. Something has to be done to qualify it, to clarify it and to prevent the misuse, if at all possible, of that exemption, but I still say again, when it is broken, you do not throw it away; you fix it.

Mr. Chairman: Thank you, Mr. Ross. I think with that note we are going to have to thank you very much on behalf of the committee, particularly for bringing expertise from other parts of Canada, which we are very thankful for. It would have meant our bringing it or going there. You have certainly served the purpose well. I am sure the things you have said will be considered by this committee.

Mr. Ross: Thank you very much.

Mr. Chairman: For the next presentation, apparently there is a slide presentation, as well as a video. We are going to need about five minutes, I understand from the clerk, to get that set up, if it is not already set up. If I am correct, we might want to take a five-minute break to do that. We will now break till exactly 10:45 a.m.

The committee recessed at 10:38 a.m.

1045

Mr. Chairman: It is 10:45. We will resume. In my anxiety, I think I did not exactly clarify to the committee that it is the group after this that we are setting up for but they have had the opportunity to set up and we will not have to have a further break, I would think.

The next group is the Retail, Wholesale and Department Store Union, John Eleen. Would you like to proceed. You have heard the direction I made before that you can use any or all of the 30 minutes but what you leave will be divided equally among the various caucuses to ask you questions.

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION

Mr. Eleen: Ab Player, the Metro director of the union was to be here but he is in negotiations this morning and I am here alone. So there is no confusion, for 23 years until about a year and a half ago, I was the research director with the Ontario Federation of Labour. I am doing work for the retail, wholesale union. I mention that because I was around in 1975 when the previous legislation was brought in and since then or a few years before then,

I must have written about 11 briefs to the various task forces and commissions, including about three last year or in the last two years.

Mr. Philip: Can you turn up the volume?

Mr. Eleen: Anyway, I will get on with the brief.

The Retail, Wholesale and Department Store Union appears before you today as one of the major unions in the retail field. We are desirous of establishing uniform hours and holiday closings in the retail establishments in this province. Our union is opposed to the government's proposal to shift the responsibility for regulating the traditional day of pause from the province to the municipalities.

The rest of the trade union movement supports our position and we have reason to believe that the many thousands of workers in the retail field who are as yet unorganized share our views in this matter. They perhaps feel even more strongly about this, since their long hours of work are not circumscribed by any provision of a collective agreement. To them an unregulated work week and wide open Sundays, statutory holidays and extension of late store openings would be an additional hardship to what are often already difficult working conditions.

Our union is less than pleased with the two bills before the Legislature dealing with this matter. Bill 113, An Act to amend the Retail Business Holidays Act as it now stands, is not only limited in scope but is self-defeating in that it is designed to abandon the day of pause, which traditionally happens to fall on Sunday, instead of protecting it. Bill 114, An Act to amend the Employment Standards Act, will, in our opinion, be powerless to discourage employers from extending store hour openings and scheduling work on Sundays and holidays. Furthermore, it will fail to protect retail workers who would wish to refuse to work on the day of pause or on statutory holidays.

I might say the government will find "unreasonable work" is going to be as difficult to define as in the previous legislation defining the tourist areas have been and they are going to run into more trouble with this definition than even the previous one. I think the government has spawned an abomination, in fact a two-headed abomination, and I think it will regret it.

We fail to understand why the Premier (Mr. Peterson) abandoned his election promise to respect the desire of the all-party committee and the will of the Legislature on this matter, that there be a common day of pause and that it continue to be Sunday.

In opposing the local option and in support of a day of pause for retail workers and their employers, we join with the Association of Municipalities of Ontario, the hundreds of churches in the province, small businesses in the retail field, individually and speaking through their organizations, retail employees speaking through their unions and individually, and the recent select committee report endorsed by the Solicitor General (Mrs. Smith) who as yet has not resigned. I think she was forced to renege on her initial position and I feel sorry for her.

1050

There is a concerted campaign by the powerful shopping plaza owners and some developers and certain individuals who would like to see a wide-open

shopping system. Sudbury was a prime example.

I was asked to speak there over a year ago by the chamber of commerce and I hesitated to drive all the way to Sudbury to speak to 25 people. It turned out they had 500 people at this meeting. For 500 people to turn out on the Sunday shopping issue in Sudbury is quite an achievement. A meeting that is not organized by steelworkers in Sudbury is quite a big meeting when they have 500 people. The chamber took the position we did.

What happened there was Campeau, the plaza owner, was forcing the shop owners in the plaza to have another late opening night. They already had Thursday and Friday. They wanted them open on Wednesday and also there was talk of Sunday opening. The shopkeepers rebelled so the meeting was 500 people; shop owners and workers in that area. I suppose that could be repeated and is going to be repeated unless something is done with other plazas forcing people on the threat of not renewing their contract or their lease on that issue.

We believe there are real dangers for the workers and their communities if the administration of certain aspects of human rights and labour legislation is turned over to municipal councils in this province. The councils are more vulnerable to local pressures and to the developers. Recently we all have read reports of developers influencing decisions of municipal councils in other important matters. They are a power lobby.

However, the municipalities are on record as being against the local option on shopping hours. They do not want it. The public does not want it. The retail workers do not want it either.

Only a province-wide uniform law administered by the provincial government can guarantee a uniform day of pause and safeguard retail workers' rights and their desire to spend the day with their families. I want to congratulate the previous presenters who put so much emphasis on the question of quality of life and the workers' need, and also their own, to spend their Sunday with their family.

The struggle for a uniform day of pause is not a religious issue. The religious issue was dragged out by the proponents of the wide-open Sunday to obfuscate the real issue.

What is really at issue is that retail workers should have a uniform day of pause, a day of rest to spend with their families and friends. What is really at issue is the negative impact a wide-open Sunday would have on the quality of life of more than one third of the work force directly involved, in addition to a large number indirectly involved.

In the One Day's Rest in Seven Act passed as far back as 1922, the Ontario government of the day believed that employees should have 24 hours of rest on every seventh day in the interest of health. The Ontario Law Reform Commission in its report in 1970 suggested such a secular Sunday scheme and further stated that any exemption be performed by the provincial licensing body and, "before making a exemption order for a particular employer or class of employers, the licensing body should be required to consult the employees to be affected either through their union or individually."

Here is where the point comes in. It is not a question of asking shoppers, "Do you want to shop on Sunday?"; it is a question of, 'Do you want to work on Sunday?' That is where the retail workers, I believe, have such a

need to be consulted on this question.

In labour's briefs to the government when the Retail Business Holidays Act was proposed and subsequently, labour has been consistent and has maintained that the tourist areas for the purpose of exemption should be limited to cottage and camping areas and should be designated as resort areas in the legislation, and that only a provincial licensing body, not the municipalities, should have the power to rule on exemptions. That is the only way to ensure a common day of pause for the whole province.

The weaknesses in the legislation that have been in operation since 1975 was that the tourist areas referred to in the legislation allowing for exemptions lent itself to too wide an application and that municipalities were allowed to make that determination. If the government had listened to us in 1975 when the legislation was brought in and had used the term "resort areas," then there would have been no confusion and the legislation would have been applied more fairly.

In all the briefs our union and other sections of labour have presented on this matter to the various committees, task forces, select committees and hearings of other bodies, we have tried to show that a wide-open retail Sunday is undesirable both from the standpoint of economics and from the standpoint of the social wellbeing and health of the workers. These arguments apply equally to late store closings and statutory holidays as well as to work on Sundays.

Today about 75 per cent of the workforce is in the service and information industry. A great number of these workers are in the retail sector. This is a continuously growing sector. It is a group with peculiar working conditions, since the workers are scattered in small groups with little power. Their working conditions would be further undermined if they were forced to work on Sundays, statutory holidays and extended workdays. This would widen the already socially undesirable gap that exists between this group and the more extensively organized industrial workers.

I want to quote here from Chief Justice Dickson in a case in the Supreme Court, where he is more eloquent than I. He said, "We have to be careful that the charter not become an instrument whereby the most advantaged group can undermine the benefits obtained by the less advantaged." He was referring to the retail workers, who, he said, do not constitute a powerful group in our society; they are less powerful than employers. The economic position of these workers affords them few choices in respect to their conditions of employment, and they are in no position to stand up to their employers to seek work elsewhere. If he had seen the employment standards bill that this government has spawned after sitting for months and months on this question, I think he might have said something about the uselessness of that bill in protecting these workers' rights.

The stresses of modern-day living: Crowding, traffic jams, pollution, noise and the high cost of transportation, housing and accommodation are all contributing to stress and nervous disorders amongst our workers. The extension of working hours or the reorganization of work schedules away from the norm and the encroachment on the retail workers' leisure time will only exacerbate the problem.

At present a two-day weekend is denied to most retail workers, as contrasted to other workers. The normal weekend consisting of a Saturday and a Sunday is the occasion when workers spend time with their families and

associate with each other culturally, socially and recreationally. That is when their friends have their free time to do with as they wish. Even if these workers were to get other time off during the week to compensate them for their disrupted weekends, this would not have the same value as a regular weekend. As it is, many workers now work a six-day week with no extra time off. There are many forces already in our hectic life that disrupt family life. An open Sunday would add to this disruption in a retail worker's life.

Forcing employees to work on Sunday would be especially disruptive for married women, who comprise a significant group in the retail operations and who would be cut off from the only day they now have available to spend with their families. Sunday operations would increase costs because employees would have to be paid premium time, and the cost would eventually be passed on to the consumer in the form of higher prices.

Because the Retail Business Holidays Act has been only sporadically enforced in the past few years, a large number of retailers in this province have been extending late-hour closings and increasing the number of days of such practices. Already some smaller and medium-sized retailers are experiencing difficulties.

The experience in a number of American cities, where wide-open retailing was adopted, was that initially there was a redistribution of the market, and certain retailers made temporary gains; but, on the whole, there was not an appreciable increase in the amount of goods bought. However, the cost to both the retailer and the consumer increased.

The experience with the local option in Vander Zalm's British Columbia—and I must apologize to Mr. Vander Zalm; we spelled his name wrong—was that once one municipality opened the door to wide-open Sunday shopping, the neighbouring ones had to follow suit for economic reasons alone, even though they might have been opposed to the move previously.

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In Alberta, according to the select committee hearings, merchants faced with the higher cost of operating seven days a week are closing earlier during the week, which is a hardship for those wishing to shop on the way home from work.

Several decades ago, Detroit was struggling with the problem of Sunday shopping and late closings. Nothing was done to stop it. As a result, the whole retail industry became wide open seven days a week. Not only were the retailers involved, but the suppliers, truckers, transportation workers and a whole network of businesses and services were forced to work extended hours. Many small businesses failed because they could not cope with the long hours. It is difficult to turn back.

This would be repeated here. In addition to the support industries, there would have to be an increase in security, police and day care, and public transportation costs would go up. These will be additional costs. Some will fall on the municipality and on the taxpayer, but in the end the consumer will pay the additional costs in higher food and merchandise prices.

The ones who will benefit are the plaza owners and the advertisers. The plaza owners get a percentage of the gross sales income of the tenant shopkeepers. They would like to get it seven days a week, and so would the advertisers.

The changes proposed in the Employment Standards Amendment Act to protect the retail workers who may wish to refuse work on Sunday will be ineffective. There are many ways to thwart the legislation. The recent select committee was given evidence by employers who testified before it. The manager of a Canadian Tire store said:

"You can pass any legislation you want but the mere coercion of a promise of promotion is enough to force an employee to work on Sunday whether he or she wishes to or not. Indeed, there are ways of getting rid of an employee who one does not wish to have along or who is unco-operative simply by scheduling him" or her "on a Thursday night when that person has classes or some other time that is very inconvenient."

In effect, managers are saying they may be forced to get around the legislation because of the nature of the industry.

The tragedy of this is that once a wide-open shopping week, and consequently a wide-open work week, is endorsed, there is no turning back. Industry, because of the great competition, cannot retrench; once consumers get used to the so-called convenience, they too resist the return to uniform hours.

This is borne out by a study, done in the United States, which points out, "When competition is focused on nonprice devices, much flexibility is lost" and "nonprice competitive efforts—whether in the form of trading stamps, store hours, variety of merchandise, attractive stores," etc., "are not rescinded."

Usually, the argument advanced is that additional services such as more late-shopping nights are required to serve the community. Public demand for the extension of shopping hours is a convenient excuse created by some individuals who are interested in making a fast buck. We suggest the prime reason for extending closing hours or the work week is to perpetuate and increase the tempo of irrational competition between merchants in an all-out war for the almighty dollar, and the home life and the health of the worker be damned.

The consumer is often asked, "Do you want to shop on Sunday?" not, "Do you want to work on Sunday?" That is the real question.

Besides opening on Sunday and late openings during the week, there is a trend to stay open on statutory holidays. This increases the cost to the consumer and at the same time plays havoc with the home life of the workers, most of whom are women. They cannot spend a weekend, holiday or evening with their families or friends.

We believe the industry as well as the workers is interested in the assurance of stability of employment. As it is, there is a degree of turnover that is unhealthy. Labour-management relations are sometimes strained because it is a relatively newly organized industry, in some sections of which working relationships are not well established. If management forces the question of Sunday opening on to the agenda, it will only add to the strained relations and conflict.

When the major chains in this industry are up for negotiations of new collective agreements, there are enough contentious issues without the addition of Sunday openings. Certainly, such an issue would increase the monetary demands for even higher premiums for Sunday work where the premiums

now exist. However, in our opinion, the market forces alone will not deter the retail chains from Sunday opening if they are forced into it by competition.

Will giving the municipalities the right to decide on Sunday shopping solve the problem? The domino effect would destroy the day of pause in Ontario. That is why we believe proper legislation is required to protect the workers involved. This emphasizes the need for uniform legislation, enacted and enforced by the province. This would give more protection to small business, promote stability of employment in the retail industry, encourage more youth into retailing, help create better working conditions, make for more respect for statutory holidays and Sundays and help hold down costs to the consumer.

In the interest of safeguarding Sunday as a day of rest, regulating of holiday closings and providing for uniform store hours as an aid to preserving family life and in the interest of the workers as expressed by the standards set by the ILO, the International Labour Organization, we urge your committee to recommend the foregoing to the Legislature, all of which is respectfully submitted by the Retail, Wholesale and Department Store Union.

Mr. Pelissero: On the first page of your brief, it says, "desirous of establishing uniform hours and holiday closings in retail establishments in the province." Could you expand on that a little? When you say "uniform hours," what do you mean?

Mr. Eleen: Even when the original legislation was brought in, in 1975, it was the concern of the Legislature at that time that there would be some sort of uniform opening and closing of stores so that the competition would not work towards getting away with opening all hours. We believe only province-wide legislation can do that. Whether it is passing bylaws for Honest Ed's bookstore or whatever, every municipality wants to be declared a tourist area. That was the weakness of the previous legislation. Once you go that route, you do not have any uniform store hours.

Mr. Pelissero: Just so I am clear, let's set aside the issue of Sunday for a moment. You are saying even in the hours for Monday to Saturday, the province should establish uniform shopping hours so that shopping hours are uniform right across the province?

Mr. Eleen: It would help, but our main concern is the Sundays and holidays. That is where the greatest havoc is wrought. As somebody said, there are now about 70 hours of shopping. Certainly, if you start whittling away at the evenings and Sunday, you are going to have a hell of a lot more hours than that, and we do not need that.

Mr. Pelissero: Also, on page 7, you mention that "the Retail Business Holidays Act was sporadically enforced in the past few years." Are you familiar with some of the increased fines and the ability to prosecute under the proposed Bill 117? Do you feel they are adequate?

Mr. Eleen: We have had so much experience in the past three or four years with the previous legislation. Mr. Magder was fined so many times, taken to court and so on. A fine is a licence to break the law. Your increased fines might be an improvement on that, but you are still going to have trouble with that. Are you going to have thousands of enforcement officers across the province checking what is happening to the workers? That legislation is a farce.

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Mr. Philip: As a national organization, I assume you have members in British Columbia. Do you?

Mr. Eleen: Yes.

Mr. Philip: I am told that despite the protestations by the Liberal government that this legislation will not lead to wide-open Sunday shopping, at the present time in British Columbia 55 out of 146 municipalities are now wide open; that the domino theory, which started with a small municipality close to the airport and very few stores, suddenly has spread now to 55, or more than a third, of the municipalities. When one considers that a number of the municipalities in British Columbia are very isolated, this represents probably a major portion of the stores in the province. Does that sound like a reasonable figure—55 out of 146 municipalities—from your experience?

Mr. Eleen: I think it is a reasonable figure, and it is going to increase. I have relatives in BC who tell me what is happening.

Port Hope and Cobourg are two municipalities side by side. What is going to happen if Port Hope opens for wide-open Sunday retailing? Cobourg will have to go along. The same thing is happening in British Columbia. With any municipality which is close to another or where the bulk of the population is close to each other, if one opens the other has to whether it wants to or not. I think that is a tragedy. There are enough problems in British Columbia without this one, and this government has enough problems without injecting this one into it: giving it to the municipalities who do not want it. I think Peterson is off his rocker to force Joan Smith to renege her position on this question.

Mr. Philip: The Minister of Labour has introduced Bill 114, stating that its purpose is to give protection to workers. I asked him if he could name one union, or even one local of a union, that supported Bill 114. Can you name one union which is in favour of Bill 114 and endorses that bill?

Mr. Eleen: No. We do not know of anybody who would endorse that bill. I think it is just useless. It is not going to help; it certainly is not going to help the workers.

Mr. Philip: The owners of stores have claimed it will drive up food prices. A number of your collective agreements probably already call for overtime for anything on Saturday, Sunday or evenings.

Mr. Eleen: That is right.

Mr. Philip: From the union point of view, will it increase the cost of food to the consumer as a result of extra wages that will have to be paid for working on Sunday, as outlined in your present collective agreements?

Mr. Chairman: We are going to need, I am afraid, a yes or no to that.

Mr. Eleen: Ab Player is in negotiations today and he tells me that this thing is likely to come up and they are going to ask for more premium pay for Sundays, if the eventuality arises. They are very conscious of this. It is going to cost more. Who pays when workers get premium pay when they would sooner be at the cottage on Sunday? The consumer will have to pay.

Mrs. Cunningham: Thank you for a very important brief. I think the importance of your brief is that you have made 10 or 11 previous ones and are quite experienced in talking on this issue. I would just like to give you some information. In the by-election in London North on March 31 when I was elected, this, in our opinion, happened to be the key issue in the campaign. You are quite right: at the door, nobody talked about Sunday shopping; they talked about not wanting to work on Sundays. The issue was not wide-open Sunday shopping. The issue was, do you want to work on Sunday? I thought you would like to hear that. Obviously, we did OK.

I would like to ask for your assistance on an issue. I am keeping a little scoreboard here as we begin these hearings. I am wondering if you would be prepared to help us with the definition of "tourist area." I notice on page 4 that you talked in 1975 about a "resort area" and you thought that would be helpful to the government in the definition. The premise of this legislation is that no one seems to be able to define a tourist area. Could you help us, and have you ever been asked for your assistance on that definition?

Mr. Eleen: No, we were not asked on that. First, I want to say we are not for closing everything on Sunday. In our previous briefs to the select committee and so on, labour has shown that we want to protect the real mom-and-pop stores and that we want gasoline stations to be open on the highway and drugstores for certain times in city centres and so on. We have those exemptions. But other than that, I think there are areas that have to be open. My kids and I went canoeing and camping in the resort areas. Those places should have stores open on Sunday. We are not against that in resort areas, but not at Markham Village here.

Any town in Ontario can declare itself, by law, a tourist area. They want to. Look at the ads. They are tourist areas. That tourist area matter is just as bad as the point about refusing unreasonable work. Nobody is going to define what is unreasonable work in a way that will stick. Poor workers will have to spend money. I am talking not only about unionized workers, but others who have less power will have to spend money with two lawyers to protect themselves on something that is going to be hard to implement: unreasonable work. It is the same with tourist areas. That is a very bad designation. It should be resort areas. That is what should be exempt. There are enough resort areas.

Mrs. Cunningham: You mentioned this being the responsibility of the province, as the previous group mentioned. Is that is something you think we should be considering?

Mr. Eleen: I do not care if it is the Attorney General or Solicitor General, whoever, or whatever body is set up, but it has to be provincial so that there will be some uniformity in all the municipalities on this.

Mrs. Cunningham: You seem to have some kind of extensive support when you present these briefs, because although you did not always mention the source or it is not written in the brief, you mentioned it as you were talking. Is good research available to you, because most of the points you have raised the Solicitor General referred to as myths? I am now talking about the domino effect, etc. You seem to have some pretty good research at your fingertips. Is this your job or why you have it?

Mr. Eleen: If I were the Solicitor General, I would have a hard time defending her position after the position she took in the select committee and signed her name to. Of course, when you have no position, you talk about myths

and so on. These are not myths we are talking about. Labour has an annual convention—the unions and the Ontario Federation of Labour—and we discuss these issues. The federation has a convention in Toronto of close to 2,000 members from the whole province, and these issues come up. We are not talking out of the top of our head. The retail and wholesale union is in touch with its members and knows what the issues are. But we are talking about more than just members in the union; we are talking about the hardware workers and others who want to spend some time with their families.

Mr. Chairman: Thank you very much, Mr. Eleen. We appreciate your coming forward, and the information you have provided us with will certainly be considered by this committee. As I said before, we are appreciative when people come voluntarily before this committee to share their time with us. I am sure you have better things to do with your time, so we appreciate it.

The next presentation is the one we we had the brief five-minute break for. I think we have everything in place, except a lapel microphone for the gentleman or lady who is going to describe the slides to us. We will not break again, unless the lapel microphone does not work.

While the technical aspects are being put forward, according to your list the next group of presenters is Shoppers Drug Mart, David Bloom and several of his colleagues. Mr. Bloom, are you going to be the major presenter?

Mr. Bloom: Yes, I will be.

Mr. Chairman: Perhaps at some time, either at the beginning or during the course of your presentation, you could introduce the large number of colleagues you have with you. I just remind you again that because of the tight schedule we have, we are trying to keep them to half-hour presentations, with questions from members. You can use all of the half hour or as little as you like, but if you use all of it, it will deny members the opportunity to ask some questions. Would you like to proceed?

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SHOPPERS DRUG MART

Mr. Bloom: Thank you very much. In order to make the presentation much more succinct and as brief as possible, we will be using slides. That means we will have to darken the room slightly. Is there a way of dimming the lights?

Mr. Chairman: Yes. Is that clear enough? We are not going to be able to put the back ones out. We found that the quality of television—

Mr. Bloom: That will be fine.

Mr. Chairman: Any members who have difficulty seeing it—

Mr. Bloom: Mr. Farnan may have difficulty seeing it.

Ladies and gentlemen, I am David Bloom. I am president of Shoppers Drug Mart. I am a pharmacist and former owner of a Shoppers Drug Mart pharmacy in Yorkdale Shopping Centre in Toronto. I certainly appreciate the opportunity to speak on behalf of Shoppers Drug Mart pharmacist-owners regarding the implications of the proposed Sunday legislation as it currently reads.

I am joined this morning by several colleagues and I will be introducing

them during our presentation. Seated to my immediate right is Herb Binder. He is the chief operating officer of Shoppers Drug Mart. Herb is a pharmacist and he is also a former owner of a Shoppers Drug Mart pharmacy on Parliament Street in Toronto.

The Shoppers Drug Mart concept is unique in pharmacy in Canada and, of course, North America. Shoppers Drug Mart's approach enables the pharmacist to operate his or her own pharmacy with all the advantages of being part of a large enterprise, while retaining the independence of a professional pharmacist and a small business person.

Each and every Shoppers Drug Mart is owned and operated by a licensed pharmacist we call an associate. The outstanding success of the concept certainly lies in the flexibility the associate/owner has to meet local consumer needs, while benefiting from the overall strength and identity of a family of pharmacies primarily dedicated to the health needs of their communities.

Most associates were born and raised in their communities, and Shoppers Drug Mart has favoured selecting associate/owners from within their respective communities. For example, my colleague Peter Pridie, on my far left, is the associate/owner of the Shoppers Drug Mart in Bowmanville, and he has been a resident of that community for over 10 years. I want to introduce my other colleagues during the course of my presentation.

I think a little history is very important in order to appreciate the issues. The first Shoppers Drug Mart opened in Toronto some 28 years ago. My colleague Barrie Haberman, to my left, was the second associate within the system, and today he still owns and operates the Shoppers Drug Mart at the York Mills Shopping Centre in Willowdale.

When it was launched as a public company in 1968, known as Koffler Stores Ltd., Shoppers had 52 pharmacies, all located in Ontario. The prototype size of a Shoppers Drug Mart was 7,500 square feet of selling space. Shoppers pharmacies have not changed for as long as Shoppers has existed.

Shoppers continued its growth in Ontario and opened its first pharmacy outside the province in 1969, in Saint John, New Brunswick. Milestones have included the entry into Manitoba in 1970; British Columbia, Alberta, Saskatchewan and the Yukon, in Whitehorse, in 1971, and Quebec in 1972, under the banner of Pharmaprix. We use a French name in Quebec.

Today, Shoppers Drug Mart comprises some 589 community pharmacies, of which 295, or over one half of the pharmacies within Shoppers Drug Mart, are located in the heart of the company, Ontario. There are 10,000 full-time and part-time employees in the Shoppers Drug Mart family in Ontario. Shoppers Drug Mart has extensive direct and indirect experience with the profession of pharmacy and the operation of drugstores throughout North America.

What are the effects of this legislation on communities and the residents of Ontario? As pharmacists, we believe that the regulation that will close pharmacies whose area of selling, display and service exceeds 5,000 square feet poses a serious threat to the health, safety and wellbeing of the public because of the large number of pharmacies that will be required to close as a result. Consequently, the citizens of Ontario will have to contend with the following:

It would be impossible to have prescriptions filled where personal

medical records are maintained—I am referring to the patient profile system—and this would impose significant hardship.

There is the prospect of drug interaction problems with serious medical implications in circumstances where patients are unable to access their chosen pharmacy when they need to.

Many patients, for example, the disabled, recipients of mother's allowance and those on welfare, would be denied access on Sundays and holidays to their prescription requirements and to their prescription records.

A large number of people without transportation, particularly those who are elderly or disabled, would certainly have an accessibility problem.

Many people need advice and guidance on self-medication products, such as for colds and allergies and first aid. They would be unable to obtain same and would be forced to go to emergency wards of hospitals. This would have the effect of increasing the overall costs to the Ministry of Health.

Certain special services designed to cater to the disabled would be limited. For example, Braille prescription labelling, approved by the Canadian National Institute for the Blind, the CNIB, available in specific locations.

In this regard, ladies and gentlemen, I would refer you to appendix A in the presentation. Mr. Chairman, has everyone received a presentation?

Mr. Chairman: Yes, we all have a copy of it.

Mr. Bloom: This is a letter from the CNIB and it refers to the services some of our stores provide. All the four pharmacies mentioned in that letter are in excess of 5,000 square feet and would have to close.

Because of its proximity to the CNIB on Bayview Avenue in Toronto, the Shoppers Drug Mart associate at 1531 Bayview Avenue is also installing a Braille machine in his pharmacy. In fact, by today, it might already be in. His pharmacy exceeds 5,000 square feet and would be forced to close.

You note in the letter in appendix A it states: "On behalf of our clients, we wish to thank Shoppers Drug Mart for this service and congratulate them on taking a leadership role within their own industry."

A large number of people who suffer from a hearing impairment would be unable to access their chosen pharmacy with staff who have been specifically trained in a program initiated by the Canadian Hearing Society.

I would like to refer to appendix B, which is a letter that speaks about a particular video program entitled One on One, which was initiated by the Canadian Hearing Society in co-operation with other retailers across Canada. Shoppers Drug Mart is the only pharmacy in Canada which has implemented that program.

I would like to show the committee just a few minutes of that video to give you an idea of how our associates are able to train their staff so that they can deal with this important and growing section of the Canadian public. As the public gets older, with the ageing of Canadians, this problem will continue to grow.

Mr. Chairman: Is everyone strategically located so that they can see it?

Mr. Bloom: Maybe turn up the volume a little, please.

1130

[Audio-visual presentation]

Mr. Chairman: I think it presents in a pretty sensitive fashion what you are trying to get to us.

Mr. Bloom: It is a very important part of our community program. This, as I said, is very much a growing problem. With the ageing of Canadians, this will become larger and larger and larger. The sensitivity of dealing with people with this type of impairment is part and parcel of our operating style.

I would like to quote from the letter in appendix B: "Because they are the only drugstores in Canada that are committed to Access 2000, many deaf and hard-of-hearing consumers have expressed preference in dealing with Shoppers Drug Mart and Pharmaprix stores."

There is the impact on walk-in medical clinics that provide a support service to hospitals. The potential of no-prescription service to these clinics affects their viability.

There exists the potential of absolutely no prescription service in an entire town where the only pharmacies presently open on Sundays and public holidays are all over 5,000 square feet in size. Mrs. Marj MacKenzie, the associate/owner of Shoppers Drug Mart pharmacies in the city of Barrie, will be addressing this committee on Tuesday, August 16 in Orillia. She will tell you that there exists the possibility that not a single pharmacy will be open in that city on Sundays and holidays if the legislation is enacted the way it is written today.

There is also the potential of a town or city being underserved, such as Thunder Bay or Trenton, or even parts of Toronto. In the area of Bloor and Walmer, an entire major area there, will there be a pharmacy open?

Many pharmacies located in hospitals usually close on Sundays and public holidays and emergency prescriptions are subsequently referred to the nearest open pharmacy. Because of size restrictions, that convenience will be curtailed.

Twenty-four hour Shoppers Drug Marts which are strategically positioned and located near major hospitals are generally larger than 5,000 square feet and they would be required to close from midnight Saturday to midnight Sunday. These stores were specifically designed to service emergency needs throughout the night.

We plan to convert existing and open new 24-hour pharmacies in Ontario communities where the pharmacies are close to hospitals, but this legislation, of course, would preclude us from so doing.

I would like to introduce Al Everson, who is the associate at the Shoppers Drug Mart 24-hour pharmacy at 700 Burnhamthorpe Road East in Mississauga. He will be available to answer any questions you may have regarding the number of emergency prescriptions his pharmacy fills from midnight Saturday to sunrise Monday. His is the only 24-hour pharmacy in Mississauga, Ontario, a very large and a very growing community.

Pharmacies in excess of 5,000 square feet that service nursing

homes—and Al will comment on that as well—would be unable to provide emergency prescriptions to patients in those homes. This would necessitate the patients being admitted to hospitals, resulting in an overall increase to the health care system.

I would like to outline the position of Shoppers Drug Mart. Pharmacy services have historically been available on Sundays and public holidays. Previous legislation has always provided for drugstores to be opened as part of the public's front-line health care.

Shoppers Drug Mart pharmacies in Ontario recently completed a survey regarding Sunday prescriptions filled on two Sundays. We picked one on July 17—and we picked them at random—and the other on March 27, 1988. Sunday, March 27, is an end-of-winter Sunday and July 17 is a midsummer Sunday. They were chosen to give a fair synopsis of the total situation. A midwinter Sunday, such as in the middle of February, would show even more dramatic results due to the flu and cold season.

In order to give as accurate a representation as possible, the data are based on an average prescription count between these two Sundays, and I would like to share those numbers with you. The following are the results based on a sample of 189 Shoppers Drug Mart pharmacies reporting. That is more than half of Shoppers Drug Mart pharmacies in Ontario and that is certainly a statistically valid sample.

You note on the chart 50 per cent of the prescriptions filled, out of total prescriptions of 5,488 for the 189 stores, are for new prescriptions and over one half of the new prescriptions are classified as emergency, those written by a doctor at a hospital or walk-in clinic. Emergency is 27.7 per cent and the total number new was 50.4 per cent, so over half of the new prescriptions filled were labelled as emergency prescriptions coming out of a hospital. Bearing in mind the proximity of our pharmacies to hospitals and walk-in clinics, one can understand those numbers.

Most prescriptions filled on Sundays from hospitals and clinics are likely to be for antibiotics and immediate need or for pain medication, painkillers and immediate need. You note that in the antibiotic category, 22.1 per cent were for antibiotic and 10.8 per cent were for pain. Remember these patients are sick and in pain and they must start their medication immediately. All of us, I am certain, have been through that situation on a personal level.

Forcing these patients to go to an unfamiliar pharmacy can be unsafe, or having prescriptions filled by an unfamiliar pharmacist can cause more stress and anxiety for a patient for the following reasons:

The first and the most important reason deals with patient profiles. Complete patient profiles at a Shoppers Drug Mart pharmacy will show a patient's allergies, such as those to penicillin. I am sure that most members of this committee appreciate that there is no linkage between the pharmacy computers of any pharmacy in Ontario. Each patient profile is maintained independently.

For example, Barrie Haberman's Shoppers Drug Mart could not fill in a computer prescription from Al Everson. Each store is a stand-alone; each pharmacy is a stand-alone. There is no linkage. If those are filled at another pharmacy where the patient records are not available, the results could be disastrous. There have been many examples of that in the past.

The second reason is that the patients spend time travelling looking for a pharmacy that is open. Third, if the prescription is for a narcotic and the pharmacist at the other pharmacy is unfamiliar with the patient, the pharmacist, according to his professional judgement, would have to verify the prescription, and once again there is a time lag.

About 20 per cent of the prescriptions in the survey are for Ontario drug benefit recipients, the majority being senior citizens. It could also be detrimental if a senior must take a new prescription to another pharmacy as most seniors are on a fairly complex drug regimen and the patient record system, the patient profile is critical. It is mandatory for their proper use of drugs. Because seniors tend to take a greater number of prescriptions, there is always the increased chance of complications due to interactions.

Another problem is that because the second pharmacy would not have a complete patient record, it could easily fill a prescription, for example, for coated aspirin when that patient is taking an anticoagulant—once again the contraindication, the drug problem—and this could be disastrous.

My colleagues Katherine Barker, the associate/owner of the Shoppers Drug Mart at Five Points Mall in Oshawa, and Linda King, to my left, who is our associate/owner of the Shoppers Drug Mart at Humbertown Shopping Centre in Etobicoke, will both be able to relate specific examples of emergency prescriptions filled in their stores on any Sunday.

What are the effects of the proposed act on Shoppers Drug Mart? Shoppers Drug Mart is positioned as a traditional pharmacy with a merchandise mix consisting predominantly of prescriptions, over-the-counter medications and health and beauty aids. If the proposed legislation is not amended, 186 Shoppers Drug Mart pharmacies will have to close immediately.

That means that 42 communities would totally lose Shoppers Drug Mart service. I am talking about larger communities and I am talking about smaller communities, communities such as Brampton, Bowmanville, Kingston, London, Trenton and Ottawa. The closure of Shoppers Drug Mart pharmacies in these 42 communities will have a serious impact on the health, safety and wellbeing of their citizens.

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I would like to elaborate on and conclude with our Shoppers Drug Mart recommendations.

The area of service to the public for pharmacies should be amended from 5,000 square feet to 7,500 square feet. This amendment will ensure that all Ontario communities have services for their prescription and health care needs; 5,000 square feet amended to 7,500 square feet.

However, this amendment would still mean that 39 Shoppers Drug Mart pharmacies would be compelled to close on Sundays immediately after the legislation is passed. This would create serious hardship for the patients of these pharmacies, especially in northern communities such as North Bay, Sault Ste. Marie, New Liskeard, Elliot Lake, Sudbury and Thunder Bay. The current legislation singles out pharmacies for immediate closure, whereas others are given a one-year moratorium to approach municipalities and avail themselves of the municipal option provision. Therefore, we recommend that pharmacies be treated in the same manner in order to protect the health, safety and wellbeing of the people of Ontario.

I would like to emphasize that close to 50 per cent of the prescriptions filled on a Sunday are filled in a Shoppers Drug Mart pharmacy in Ontario; close to 50 per cent of all the prescriptions filled in Ontario are filled in a Shoppers Drug Mart pharmacy on a Sunday and on holidays. You can therefore appreciate our concern regarding the health issue. You can understand our concern regarding the health needs of the citizens of this province.

I would like to thank you for giving us an opportunity to make our presentation. At this time, I would certainly welcome any questions.

Mr. Chairman: I have Mr. Chiarelli. We have approximately eight minutes to be divided equally.

Mr. Chiarelli: Mr. Bloom, I was very interested in hearing that you have 10,000 employees. I wonder if you could share with the committee your experience at labour relations in terms of employees working on Sundays. Do you have problems in terms of having to coerce people to work on Sundays? Do you feel you have happy employees? We have heard a lot of criticism about this legislation regarding forcing retail employees to work. What has been your experience on Sundays from a labour relations point of view?

Mr. Bloom: Of the 10,000 employees we have, close to 5,000 are part-timers. A great number of them are students attending either high school or university. I would say that about 90 per cent to 95 per cent of our employees who work nights and weekends are part-time employees, and most of those are students and they look forward to it. In fact, many of them put themselves through school, especially university, by working at Shoppers Drug Mart pharmacies.

Mr. Chiarelli: Have you had to fire any employees because they would not work on a Sunday?

Mr. Bloom: I have not heard of one case in the last 10 to 15 years of anything that even resembles that situation. We have no problem at all employing people on Sundays because of the student ratio within our part-timers.

Mr. Chiarelli: I will try to be very brief; I know we have limited time. The other question: We have heard people talk about wide-open Sunday shopping under this proposed legislation, yet you are here before us saying we are going to be closing stores down on Sundays. How do you account for that discrepancy?

Mr. Bloom: Pharmacies are different. We are talking about health care here, about pharmacies providing the front line of health care in Ontario. People do not plan to get sick on Friday, Thursday or Sunday. We are talking about prescriptions; we are talking about over-the-counter medications. This is a different situation and we certainly feel pharmacies should be treated differently.

Mr. Chiarelli: In your average-sized store, what percentage of your sales on a Sunday would be drug- or pharmacy-related products and what percentage of sales would be electric hairdryers, cosmetics, cases of soft drinks, etc.?

Mr. Bloom: In that same survey I just showed you, we took time to look into that question because we ourselves wanted to understand it. Between 50 per cent and 70 per cent of our total sales on Sunday are related to

prescriptions, over-the-counter drugs and first-aid products. That is a very large proportion. Maybe Mr. Haberman would like to comment about his store at Bayview-York Mills.

Mr. Haberman: My statistics are roughly the same. If I may comment on your first question, in my store there is only one full-time employee who works on Sunday, and that is a pharmacist who is not covered by the legislation in any respect. All other people are part-time people.

If I could interject quickly, again, I am very close to Sunnybrook Medical Centre and in the particular survey Mr. Bloom refers to, on March 31 I had 34 new prescriptions, of which 30 were emergency, 27 of them coming from Sunnybrook hospital. If I could make one small, minor point, I closed one year on holidays, on July 1 and also on August 1, because it was unprofitable for us to remain open. I had five calls about closing on the first one and about five calls for closing on the second one.

One of them made a very important point. He said: "You owe it to your patients to be open. I don't care whether you make money or not. We've got to have our prescriptions filled." This was a Monday and I gave them no notice. What is going to happen across the province when all these people are closing on Sunday? I am really concerned about the health and welfare of my people. Their prescriptions should be filled. There is absolutely no relationship between the size of a pharmacy and the needs of the community with regard to health; size is immaterial.

Mr. Chairman: I am going to have to interrupt, I am sorry, and move to Mr. Philip. You have two and a half minutes.

Mr. Philip: One of the most powerful arguments I think you made was thrown almost as a throw-away line. Are you not saying that if this legislation is not amended to the 7,500 square feet, there are going to be more municipalities that are going to have to open for everyone and that it will lead to more wide-open shopping than less? Certainly, none of the Shoppers drug marts in my riding, the five of them, is a grocery store. They are not Herbie's. It would not help Herbie's to open, but it would provide essential services to those such as the one located in an Ontario Housing Corp. development opposite the hospital, where no drugstores are within very close proximity.

May I ask two questions at once. Will it lead to more wide-open shopping if your amendment is not put in, and is it true that this amendment would not lead to the grocery stores that are masquerading as drugstores opening?

Mr. Bloom: You mentioned Herbie's as an example, an off-price discount store. With this amendment, they would not be able to be open. We are talking about 7,500 square feet. Most of those kinds of stores are in excess of 15,000 square feet and carry a full range of products. We are talking about community pharmacies. I am glad you mentioned Ontario Housing areas. We are really referring to the health, safety and wellbeing of the people of Ontario; and by amending it from 5,000 to 7,500 square feet, the communities will have full services.

Mrs. Cunningham: Picking up on the remarks of your colleague on no relationship of the size of the pharmacy with regard to the needs of the community, I happen to agree with that because three of the pharmacies that are part of your group in London, Ontario, will close. I am surprised to see the 7,500 square feet, because they are all just under 10,000 square feet, and

I am wondering how solidly you are married to this number, 7,500 square feet, and what you would do if we did not look at the size of the pharmacy? What could you offer us if we were not looking at size?

Mr. Bloom: What we are suggesting is really a two-part amendment. The first part would be that the 5,000 square feet would be amended to 7,500 square feet, and then we are referring to the one year whereby stores larger than that, the several you have mentioned, Mrs. Cunningham, would have the opportunity to go the municipal option route. We do believe we must ensure that the health, safety and wellbeing of the citizens of Ontario are protected, and that is why the immediate closure, once the legislation is passed, has very serious implications for the people of Ontario. The average person in Ontario does not appreciate it. They do not understand the legislation the way it is put forward today.

Mrs. Cunningham: For your information, when we raised that during the presentation of the Solicitor General (Mrs. Smith), she said, in response to my question, that maybe you could do something about that. I am assuming the government is sympathetic to your point of view around the one year. I am assuming, by her comments, that might be one of the soft areas in which we can move.

I am very much surprised, though, and I am still going to ask the question—I want a different answer, obviously—are you really married to the 7,500 square feet?

Mr. Bloom: If the committee came up with a number that was larger, such as 10,000 square feet, it would mean that rather than having to become a political lobbyist for 39 stores, it might mean 22 stores or 15 stores. We are pharmacists; we are not politicians and we are not political lobbyists. Really, we do best fulfilling our professional mandate, which is patient counselling, filling prescriptions and being the first line of health defence for the citizens of Ontario. If this committee can take us out of the political arena, we welcome it.

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Mr. Chairman: Mr. Bloom, we appreciate you and your colleagues coming forward to help us deal with this particular issue and thank you for taking the time away from your profession to do that.

Mr. Bloom: Thank you very much for your indulgence.

Mr. Chairman: The next presentation is by REAL Women of Canada. Would Gwendolyn Landolt and Rita Hartmann please come forward. I wonder if the people congregating in the middle of the room might move on and allow these people access to the front table.

There seem to be four people and we have only two names. Perhaps whoever is going to be the main presenter might introduce her other colleagues for the purposes of Hansard. You have heard the direction, that we are on a very tight schedule. We are allowing 30 minutes for presentations. You can use all or any of that for your presentation, but we hope we will have time left over to allow members of the committee to ask questions. Perhaps you would like to proceed.

REAL WOMEN OF CANADA

Mrs. Hartmann: My name is Rita Hartmann. I am a lawyer in Toronto and I am president of the Ontario chapter of REAL Women of Canada. I am also a single mother. On my right is Judy Anderson, who is not on your list. At the last minute, Judy was able to come with us today. Judy is a working mother. She is a teacher in Toronto and she is the vice-president of our Ontario chapter. On Judy's right is Gwendolyn Landolt, who is the national vice-president of REAL Women of Canada. Gwen is a stay-at-home mother who has been very active in community organizing with several community groups across the country.

I believe you all have copies of our brief.

Mr. Chairman: Yes, we do.

Mrs. Hartmann: The gist of our brief is that we have many concerns about what the proposed legislation will do to undermine family life in Ontario. I heard the tail-end of the previous brief from the pharmacists of Ontario. Where there are particular needs, we certainly have no objection to the government mandating for the province as a whole to meet those needs. However, we are opposed to wide-open Sunday shopping. We feel it will significantly undermine families in Ontario for various reasons set out in our brief. We also feel it will undermine the rights of the people in society who are the least powerful.

Currently, many of the retail employees are single women like myself—I do not work in a retail store at the moment, but I have in the past—students and those who generally do not have lobbies for themselves. They do not have the time, money or power to be here with you. So we come also to speak for those people.

For those of you who are not familiar with our organization, we are a national, nonsectarian, nonpartisan, interdenominational group of women who believe in putting family life first. We have 45,000 dues-paying members. We represent people who have put their money on the line to join us and who feel very strongly that they would like to have their point of view heard by governments in this country. In Ontario, we have approximately 10,000 members throughout all ridings of the province.

To walk you quickly through the brief, on page 4 we point out that it is a matter of priority. We women cannot run our families, our businesses, our volunteer organizations and our other concerns without setting priorities. You, as politicians, as elected members of this Legislature, need priorities. We are suggesting to you that one of your first priorities should be the preservation of the family and that any policy that derogates from that should not be adopted.

On page 5 we talk about the tax burden. One of the reasons there are so many mothers of young children in the workforce these days is the incredible tax burden that families bear. As set out at the top of page 5, 21 per cent of children under six these days and 19 per cent of children aged 6 to 14 are living in poverty in Canada. Anything that increases the tax burden on their families increases those percentages, and it also makes more mothers of young children go out to work who otherwise would not.

If a woman wishes to go out to work and chooses that, it is wonderful. I worked for 11 years in the Ontario government myself. However, I do feel women

should have the choice to stay home with their children when they are young, if that is at all possible.

At the bottom of page 5 we review legislation that found that Sunday as a day of rest is not a religious thing, it is something that is for the benefit of society. It comes from our traditions, which should not be easily tampered with.

On page 7 we point out the need for women and families to have a common pause day. If the legislation, as it is presently drafted, goes through, it will lead to a domino effect in the sense that if retail stores start staying open seven days a week in various places in the province, gradually it will become convenient for other entities to function seven days a week. Eventually, I anticipate there would be pressure on the Legislature to sit seven days a week, which would cut time in constituency offices and the time you members get with your families. As a former civil servant, I remember that there would then be pressure for civil servants to work different times.

At the moment, and Mrs. Anderson will speak to this in a minute, children are away from school on Saturday and Sunday. That is the only time they have to be with their parents. Once you start having a seven-days-a-week society, you start changing that as well.

As a single mother, I can tell you that it is extremely difficult to find day care or babysitting on Saturdays and Sundays, or evenings, for that matter. Eventually, there would be a demand for the public purse to pay for seven-days-a-week, 24-hours-a-day day care centres. This again would tend to drive taxes up, but in the meantime, it would be single mothers like myself who would be left holding the bag, trying desperately to find someone to take care of their children while they work all sorts of different hours and different weeks of the year, perhaps even Christmas Day.

Children need quality time with their parents. Where there are two parents in the family, they need time with both of them. Where there is one parent, such as in my family, any time the children have with the parent is very, very important.

We have heard of teenagers and students in their early 20s working part-time. Teenagers and people in their early 20s are going through a particularly trying time of life. Even more than many other groups, they need family time to give them a sense of balance, to give them time to get the advice of their parents on all the new issues they are confronting in their lives.

At the top of page 9 I have a quote from anthropologist Margaret Mead, who is very well known to you. She basically says that families are in trouble. She says the more families are in trouble, the more we need to keep to certain rituals as a society. We need to take time, we need to consider any innovations we are going to make before we make them and consider all the effects this could possibly have on families.

At the bottom of page 9, single parents: I am a member of both Parents Without Partners and the One Parent Families Association of Canada. Both those organizations have many group family outings on Sundays at the moment, because that is the only time when many, many of the single parents are free to get together and let their children play with one another, play with children in similar circumstances. The parents can get together and compare coping strategies. I have personally received a lot of help from that. If Sunday

shopping came in, about half the people I talk to at these outings would not be there.

On page 10 we go into family and environmental concerns. I am sure you know that if more open shopping comes in, there will be increased costs for air-conditioning and everything else. At the moment, it is possible for shopping centres to at least gear down for Sundays. If this legislation goes through, it will not be possible, and it will be even more taxing on the environment.

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At the bottom of page 10, we go into provincial jurisdiction and the local option. Mrs. Landolt and I, who are both lawyers, have been over this legislation. We believe it is of questionable validity. Under our Constitution, the province is responsible for labour laws, and it is not acceptable for it to delegate labour laws to the municipalities, which is in effect what happens under this legislation.

Moving to page 13, the proposed amendments—

Mr. Chairman: Sorry, page 13?

Mrs. Hartmann: I am attempting to be cognizant of the fact that you ladies and gentlemen do need a lunch hour, so I am sorry if I am flipping through quite quickly. On page 13, we talk about the proposed amendments to the Employment Standards Act.

Mr. Farnan: I think there seems to be undue pressure on the delegation. I do not think we have to hit a deadline of 12 o'clock.

Mr. Chairman: No. In fact, you did not start until 11:55 a.m., so you are well ahead of schedule. Just relax.

Mr. Farnan: I think the delegation is under the impression that there is a cut-off point. I think the delegation is entitled to as much time as every other delegation.

Mr. Philip: We are willing to give up part of our lunch. Just feel relaxed.

Miss Roberts: Was she informed she has a half hour?

Mr. Chairman: Yes, so you can take your time.

Mrs. Hartmann: Thank you, that is very kind of you. Just as an aside, we were going to bring bran muffins for everyone, but by the time our children had assembled all these briefs—

Interjections.

Mrs. Hartmann: We just did not want you feeling left out. For the benefit of the clerk of the committee, contrary to the rules, we were going to put these briefs on pink paper. However, you are lucky in that my favourite stationery store had run out of pink paper; they have had so many other requests.

On page 13, going into the labour law effects of this, many of the

mothers and some of the fathers that I talk to at my single-parent groups do work in retail stores. Many of them are women who have just recently gone into the workforce. They took whatever jobs they could get. Their job credentials are not all that high. The only jobs they could get were working in retail stores. They are extremely concerned that under this legislation they would have to work on Sunday. It is the only day in the week they get with their families and with other people in similar circumstances.

They feel that the protections that are built into the amendments to the Employment Standards Act would not be adequate for them. They are well aware that if they make any complaints, at the moment, it can take four to six months for those complaints to be dealt with. They feel that if very many of them were to complain that they were unreasonably being required to work on Sundays, the waiting period would just simply get longer. In the meantime, they need to earn a living. They depend on those dollars to feed their children. They do not wish to go on public assistance. They feel that anything this committee can do to recommend something that would give them stronger safeguards or to keep Sunday as a sacrosanct day for families would be very good.

On page 14, we briefly discuss enforceability. We feel the \$50,000 fine that is mentioned in the proposed legislation is good. However, we note that a municipal council could lower that fine. We also feel it would be wise to have in the legislation a proviso that the fine would definitely—not "perhaps"—be related to the profit that a store made by opening on Sunday illegally.

On page 15, you will see our recommendations. As far as the actual legislation is concerned, we recommend that Sunday should remain a common day of rest in Ontario, of course, subject to exemptions for necessity to be set for the province as a whole. In recommendation 2, the province should retain jurisdiction over the Retail Business Holidays Act and should not attempt to delegate its responsibility to municipalities.

Penalties should include the amount of gross revenues earned by the violator on the day of the offence in addition to a set financial penalty, to assist the enforceability of the legislation.

Any designation of tourism areas and seasons should be done by cabinet on the basis of objective and verifiable evidence rather than by local option.

I would like to point out that one of the arguments for more Sunday shopping is to increase profitability, etc. Any increase in profits can come only from business from outside the province. Otherwise, all we are talking about is spreading the same number of dollars over seven days instead of six. If it is reasonable to increase tourism by having wide-open shopping in certain areas, surely that is a decision cabinet can make, and surely areas should not be put to extra expense where there is not a significant demand from tourists.

Our basic concern—and my two colleagues here will go into it in further detail—is that we feel this legislation would not even have made it through cabinet and into the House if the government and the elected members were taking more regard for family policies. There have been no publicly funded family lobbies for the past many, many years at either the provincial or the federal level. As a result, family members who have been working to support their children, who spend their time going to work, coming home, doing the shopping and trying to have quality time with their children do not have anyone to speak for them. On the other hand, other groups do have a lot of

public funding, and their voices tend to get heard before the voices of families. We are suggesting that this government should address that. We suggest a few specific ways it can do that, and we feel these are very modest proposals.

We would like to see a minister without portfolio for family policies in the Ontario government. We feel that that minister would function very similarly to the Minister without Portfolio responsible for senior citizens' affairs. He or she would provide one-stop shopping for families where they could go and voice their concerns and would provide representation at the cabinet level for family concerns.

In addition, perhaps there could be a family ombudsperson. I have spoken to many, many families who have had dire troubles with government, with government policies, who have not known where to turn. If they go to the usual places, they find they are about number 200 in order of priorities. They would like to have a specific representative who would be aware of their concerns to whom they could go who could then direct them to other places to go for help or who could clear up a problem for them.

We also suggest a family directorate. At the moment, the Ontario government has a women's directorate. We would like also to see a family directorate that would represent men, women and children in families. We would like to see more emphasis on groups that bring people together, not on men and women fighting each other, or on seniors against middle-aged people, or on children against their parents. We would like to see a family directorate that would bring people together.

We would also like to see an Ontario advisory council on the status of the family so that the government would have the benefit of advice from outside parties on any proposed legislation or policies that have to do with families.

I will turn this over to my colleague, Judy Anderson.

Mrs. Anderson: I am here as a working mom. I work full-time. I happen to be here this morning. I am very fortunate that I am on holiday, and that is why I am here.

Even with Saturday and Sunday to be with my family when I am not on holiday, as well as the generous holidays that I have when my children do—I am a teacher, as has been said before—I find the emotional, financial and physical pressures to carry out my family and career responsibilities incredible. I also have other advantages: I have a most supportive husband and I have extended family nearby.

Now, if I find my circumstances onerous, I can only imagine the hardships on those families, many with only a single parent, where the parent or parents work in retail. Those families may not have either Saturday or Sunday to be with their spouse, their significant other, and with their children.

Families need time together. How can we expect to have healthy, integrated families if career pressures force many families to lose the one day that they have together?

As I have said, I feel under incredible pressure. I am on my holiday. It has taken me July to settle down. In August I am a real person, I feel. I even

now worry about the rat race from September to June, once we get started with the kids' activities, with my husband and me gone from eight in the morning until maybe six at night. And what we do when the children are sick, etc.? Already my stomach begins to go into knots when I think of the incredible runaround from September to June. As I said, I am advantaged, I get two months of holiday. I wonder what happens to the parents with far less time.

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As a teacher, maybe we will need school for seven days. If parents need time with their children, and they do, will we have to negotiate our children's schooldays or the days they get off? That is not conducive to healthy, integrated schools if the kids are in and out for various days. Maybe that sounds farfetched, but I think families need time together. We might have to accommodate that if parents are out working seven days a week.

I would also like to say that if parents are working, the children need child care. Both of my children at this point are in a day care centre. My three-year-old is there all day and my seven-year-old goes there after school. I have to say they love the summer when mom is home with them. They would rather be with me than in their day care, which is a wonderful day care.

There are many structured activities at the day care which are really great, but children also need time and space for unstructured activities. Certainly, when we were young, I think that was what the neighbourhood was like. We were sent out to play and we played all day. We could because of the climate. It was not dangerous and there were lots of people around in the neighbourhood.

I think this is another point that neighbourhoods are not strengthened by parents being out all day, every day of the week. Personally, I do not get much time to see my neighbours. We wave to each other possibly in the morning on our way to work. Most of the time it is dark when we get home, and we may have the occasionally phone call, but I do not think it is really good for neighbourhoods to have parents away all week. We have Neighbourhood Watch, but I wonder if there are people around in the day to watch the neighbourhood or watch the kids.

My children like the unstructured time. They like the time with mom. They like the time with my friends and their own neighbourhood friends. When they are in day care and my husband or I are out at work, a lot of that unstructured good time together is lost. We try to get it all crammed into Saturday and Sunday, which we are very fortunate to have, but that is not easy.

I think we have to think very carefully before we open up our society to seven days a week. For parents working, I think it is very difficult for the family.

Mr. Chairman: Mrs. Landolt, do you have anything to add before we open it up to questions by committee members?

Mrs. Landolt: No. The only point I would like to make is that the special-interest groups have been well funded in Ontario but nobody has spoken for the family and never before in our history have families been under such stress and strain.

There is the example of increased divorce rate, alienated youth and the problem of our ageing population. Those are basic family problems. Our concern

is with the media, which have been so powerful and so influential. If you take away Sunday from the family, from the parents, they will have even less opportunity to offset the impact of the media, the advertising on those children. The only way we can have a solid, firm society is by parents transferring values. If you do not have time with children, you do not have those values. Losing this with Sunday shopping will be one last straw in a very fragmented family life. It is going to be detrimental in the long range to Ontario society.

Mr. Philip: I wonder if I can ask you this question. I know your organization keeps track very closely of what politicians say, and therefore you were aware of the statement by the Premier (Mr. Peterson) during the election that he supported the report of the all-party select committee, which recommended keeping intact the principle of a common pause day. Did you believe the Premier when he said he was in favour of a common pause day during the election campaign?

Mrs. Landolt: May I answer that. We had the Ontario government arguing when the Retail Business Holidays Act was before the court and when it was found to be constitutional in the Edwards case, we then found the Attorney General (Mr. Scott) saying in his statement in the Legislature on April 14 that we really do not need that, that this province is so diverse we need to have different actions and different positions throughout the province.

There is a common bond in Ontario. Whether one lives in the northern reaches, in little towns in the north or in the busy southern towns, a common bond is family. Obviously, what this legislation does is to opt out family. It is not opting in family, and that is the point. Obviously, you have this diametrically opposed action by the government and the courts and what they are doing with this legislation afterwards.

Mr. Philip: Let me put the question in a different way. Do you feel that bills 113 and 114 are a betrayal of the promise made by the Premier during the last election campaign?

Mrs. Landolt: It would indicate that he has lost sight of the objectives of what he said perhaps at the time. He may have been overwhelmed by other interests, but he has lost sight perhaps of what he had stated during the campaign. We also have a court case saying that you cannot believe things politician say—you must have seen that—and under the Charter of Rights, you cannot sue them for what they say during an election. Maybe anything goes, but you may say the Ontario government clearly has lost sight of families in this legislation.

Mr. Philip: As a national organization, you are familiar with what happened in BC. Do you have any comment on that? That is my last question.

Mrs. Landolt: I do not know what you are referring to, Mr. Philip.

Mr. Philip: What happened in BC with the municipal option and how many stores are now open in British Columbia as a result of the Vander Zalm government going the municipal route, which the present Liberal government seems to be copying. Can you comment, as a national organization, on what has happened to families in British Columbia subsequent to the municipal option being adopted there?

Mrs. Landolt: What we do know is that the Vander Zalm government has realized the impact on family. They have given \$20 million to restore family—

Mr. Philip: I am talking about Sunday shopping, though. Would you mind confining yourself to that issue in answering the question?

Mrs. Landolt: I do not think I am familiar with what happened there. We know about New Brunswick. We know what the Toronto Star said about Boston. But perhaps you can enlighten us what happened in British Columbia, because I do not think we are aware. We are aware of the problems in Alberta and Saskatchewan, but British Columbia, I do not know.

Mr. Philip: Do you want to comment then on Alberta?

Mrs. Landolt: Yes. We do know what is happening in Alberta: As the domino effect has taken effect, what is happening is that one community after another has had to succumb because of retail pressures, in order to keep the businesses alive. The impact in Alberta is that once a community decides to have wide-open Sundays, then all the surrounding communities fall under the domino effect. That we do know. If that is the same thing in British Columbia, I do not know, but those two provinces, Saskatchewan and Alberta, are having enormous difficulty with the municipal option.

Mrs. Cunningham: I would like to thank you for your presentation, especially the quotes of Chief Justice Brian Dickson, as he described for all of us what a common pause day really means. It is not just a day off; it is a day off when our children are home from school. I thank you for that.

I was most interested in your statistics on poverty—they are numbers that I am very familiar with in my work—and even more interested in your reference there to the tax burden. Of course, many people who are in poverty are not even working. They cannot work, because they do not have day care for their children, and so they are forced to stay at home.

Have you done any research around the day care centres in any of your municipalities, to ask them about whether or not they are open on Sundays and how they feel about opening on Sundays? Have you done anything in preparation of this brief about day care centres?

Mrs. Landolt: Some of our members do work at day care, and their concern is that they will not have time with their families as well. It is the same as anybody else. The day care workers are no different from anybody else. It is that they will lose their day of pause with their own children as well. I do not think there is any question that they also feel that the children in the day care centre should have time with their families too, that those two days off are not just for the day care worker, but those two days off are also for the benefit of the children.

Mrs. Cunningham: A question to Mrs. Anderson as a teacher: Day care workers will be expected to work seven days a week with young children. How would you feel if you were asked to teach school seven days a week?

Mrs. Anderson: I would not feel at all happy. I would be quite upset about that.

Mrs. Cunningham: Just a concluding remark. I am not sure you were here earlier this morning, but you would have been most happy with the presentations of the first two presenters, given your concern for spokespersons for the family. Both the Canadian Retail Hardware Association and the Retail Wholesale and Department Store Union spoke very strongly in favour of families and against this legislation because of the effects it will

have on families—probably the strongest part of both their briefs, if I could just pass that information on.

Miss Roberts: I would like to thank you for your excellent brief as well and your concern for the family and the way you have put it forward today. Especially your recommendation 6, I think, is very thoughtful and thought-provoking, and I appreciate that.

I have the disadvantage of having come from a family that worked seven days a week, and continues to work seven days a week. We are farmers, and we have a dairy farm. We have to do that and will continue to do that. We also have a very strong family unit. In fact, some of my relations have not gone on holidays for years and do not understand, but you must see that there is a diverse need for various things.

What I would like to ask you about is, you considered in recommendation 4 that the cabinet should take over control of this and should make its tourism decisions on objective and verifiable evidence and not on the local option. Have you put forward the basis for this objective and verifiable evidence for tourism? Have you looked into it? To give us more information to be helpful, perhaps if the cabinet does not do this, perhaps this is what the local municipalities should have as well. Have you done anything with respect to that?

Mrs. Hartman: We looked into it very quickly while we were researching this brief. Given that we rely on our membership dues as our sole source of funding—we are a very poor organization, and we did not have the money to commission a technical study or anything of that nature—we are relying on the government's excellent civil servants to—

Miss Roberts: I am pleased to hear that someone appreciates the government's work. My last question, I will be very brief, if I might—

Mrs. Hartman: I do have a suggestion, however—

Miss Roberts: OK. Please.

Mrs. Hartman: —just on the basis of very brief research. Something like a 50 per cent ratio of stores show that 50 per cent of their income on a Sunday was from tourism. That is verifiable.

Miss Roberts: The last one is with respect to recommendation 3. You realize that the penalties under the new Bill 113 would allow them to at least now close the store and also would allow much larger fines to be levied, but at least now they can close the stores, where they could not before.

Mrs. Hartman: Yes, that certainly is an improvement. However, the municipalities could take the amount of the maximum fine down as well. Even if municipalities, because of perhaps voter pressure, opted to leave retail stores closed on Sundays, if they wanted a backdoor way of doing it so they could say to the voters, "Gee, we were tough on retail shopping," but still allow a few businesses to function, all they would need to do is decrease the amount of the fine.

Miss Roberts: And you believe that the municipalities are going to be more susceptible to voter pressure than the province is?

Mrs. Hartman: Yes.

Interjection.

Mr. Chairman: Thank you very much. We appreciate your coming forward and giving of your time, certainly in support of something that I think is a very valuable commodity in this province—family values.

The committee recessed at 12:23 p.m.

CADAM
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-578



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, AUGUST 8, 1988

Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Farnan, Michael (Cambridge NDP) for Mr. Hampton

Jackson, Cameron (Burlington South PC) for Mr. Cureatz

Pelissero, Harry E. (Lincoln L) for Ms. Poole

Roberts, Marietta L. D. (Elgin L) for Ms. Hart

Also taking part:

Marland, Margaret (Mississauga South PC)

Clerk: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Convenience Stores Association:

Pottow, Dr. Geoffrey, President

Kimmel, Arnold, Vice-President

From the Council of Christian Reformed Churches in Canada:

Van Eek, Arie, Executive Secretary

Wiersma, Don, Elder, Clarkson Christian Reformed Church

From the Retail Council of Canada:

McKichan, Alasdair J., President

Fruitman, Mel, Vice-President

From Paul Magder Furs Ltd.:

Magder, Paul, Owner

From the Scarborough Town Centre Retail Employees:

Waring, Colin

AFTERNOON SITTING

The committee resumed at 2:05 p.m.

Mr. Chairman: I seem to recall that at our organizational meeting we agreed that we could proceed if we had a quorum, even though there was not a member from each party in attendance right at the moment we started. Is that your recollection? If it is not, could we clarify that now by having unanimous consent to that approach?

Mrs. Cunningham: I do not remember discussing it before, but go ahead. I do not think we talked about it, but it is fine by us.

Mr. Chairman: Can I have unanimous consent to that effect, so that we can get on with this?

Agreed to.

Mr. Jackson: Who is your designated vice-chairman? In the other committee we are on, the chairman does not have a great record of getting there on time.

Mr. Keyes: Make sure the chairman is all there.

Mr. Sola: Yes, our chairman is there.

Mr. Chairman: That just registered.

Mr. Philip: I am glad you said that and not your colleague, because in her committee, the chairman is always there on time.

Mr. Chairman: The first delegation we have this afternoon is the Ontario Convenience Store Association. I understand G. Pottow, president, and A. Kimmel, vice-president, are in attendance, but Mr. Egerdie is not. Would you like to come forward please?

Mr. Kanter: While they are coming forward, could I just put something on the record with respect to staffing from the Ministry of the Solicitor General? David Spring, the director of legal services, is with us this afternoon. He and Mr. Ritchie will be alternating as resource people from the Ministry of the Solicitor General.

Mr. Chairman: Thank you very much for that information.

You may or may not have been here this morning, but we have allocated a period of 30 minutes because of the great numbers who wish to address us on this issue. We have a copy of your presentation before us. You can use either a part or all of that 30 minutes if you wish, but we would like to leave time for members of the various caucuses to ask questions. I leave it up to you as to how you proceed, but we would like to leave time for those questions.

ONTARIO CONVENIENCE STORE ASSOCIATION

Dr. Pottow: The Ontario Convenience Store Association appreciates the opportunity to meet with you today. We realize that your schedule is very busy, and our time is limited. We have therefore prepared some opening remarks that touch briefly on some of the main points covered in our written

submission, which has been distributed to you and your staff. We are, of course, prepared to answer any questions you may have on our full brief now or at a later date, if that is more convenient for the committee.

We would like to begin by saying that we agree with the government that any new legislation dealing with the issue of Sunday shopping must be both equitable and enforceable. In contrast to the existing legislation, Bill 113 deals effectively with some of the most troublesome Sunday shopping issues, including roping off, enforcement and the Sabbatarian exemption.

The significance of this legislation for our members is immense. Our business has been built in response to a consumer need for access to food and other necessary items at odd hours and on Sundays and holidays, and these time periods constitute the core of our business. In the past, convenience stores have provided a public necessity—access to needed products in areas where no other outlets are open—and they will continue to do so in areas where Sunday shopping is not opened up.

However, it is likely that the significant competition for Sunday business that convenience stores will face from larger retailers and malls if this legislation is passed will mean substantial reductions in already small profit margins. Our profit margins on an industry-wide basis currently run about 1.1 per cent after tax.

We also realize the significance of Sunday openings for local communities. Our experience has taught us the importance of being sensitive to the needs of the local community or neighbourhood. Because our locations are small and limited in the nature of their business, we have been able to successfully integrate into the communities, providing access to essentials without disrupting local lifestyles.

Bill 113, however, opens up the possibility of a wider-scale Sunday opening involving large outlets offering a broad range of products. These stores, geared to regional rather than local needs, will interact in a very different way with the local communities.

We believe that against this background the public interest will be served only if the proposed legislation is amended to define minimum standards governing a fair process of local decision-making which will ensure that the public receives notification and an opportunity to comment on any proposed exercise of the local option. To quote the Solicitor General (Mrs. Smith), "The law must be fair, coherent and workable" and it is the duty of the legislators to ensure "that the people of this province have fair, enforceable standards to guide their actions." The Ontario Convenience Stores Association shares these goals.

However, while Bill 113 may be enforceable from a strictly legal point of view, it raises new issues of workability for many businesses. This legislation will effectively create over 800 independent decision points across Ontario. Businesses with operations throughout the province will be forced to enter into the Sunday shopping debate hundreds of times. The prospect of this debate being renewed after every municipal election aggravates the problem even further. Such a situation would prove enormously costly for all businesses and would pose an especially heavy burden for businesses which have small operations in many different communities.

The practice of the provincial government providing guidelines for municipal governments to follow is very common. For example, while local

municipal governments are given the power to make planning decisions on such items as subdivision and condominium plans, land use and zoning planning, these decisions must all be made within the framework of provincial legislation, i.e., the Planning Act, and regulations which apply to planning decisions made at all levels of government in the province.

Similarly, while the municipal governments may decide where to locate their sewers, they must ensure that their sewage systems meet the guidelines established under the Environmental Protection Act and the Ontario Water Resources Act.

Another example is school boards. Although they have the power to develop programs and courses for the schools in their area or jurisdiction, they must base their decisions on strict curriculum guidelines which are developed and enforced by the Ministry of Education. The ministry has final responsibility for determining the general direction of education in the province.

In all the cases, the provincial guidelines have the same purpose—to ensure that the decisions made by local municipalities are consistent with provincial objectives and are in the best interests of the province as a whole. Our association feels that the provincial government must address the process by which municipal governments will exercise the local option. We urge you to ensure that decisions are made by way of an open and fair process.

Municipal authority to allow certain stores or areas under its jurisdiction to open on holidays will, in essence, have the same effect as a zoning change. The process for dealing with zoning changes at the municipal level includes notification to the affected and surrounding property owners and at least one public hearing. Bill 113 provides no such mechanism for local debate. A local councillor may, without warning, introduce a bylaw to create or amend an open designation. The community would have no opportunity to examine or debate the proposed bylaw. Our association feels there must be a formal approval process for all applications for an open designation, including an opportunity for public scrutiny and debate.

We also urge the committee to recommend that the government accept the recommendation of the select committee on retail store hours that the Ontario Municipal Board should be designated as the appeal body in connection with municipal decisions exercised under this act. The Ontario Municipal Board already has the power to review municipal government decisions on municipal and planning matters, such as zoning bylaws, subdivision plans, official plans, municipal capital expenditures and debentures, assessments and expropriations. Addition of the power to review one more municipal government decision could be accomplished quite simply.

The OMB, as a body familiar with the process of municipal government, could also be directed to develop guidelines to govern the implementation of the local option in a fair and equitable manner. The OMB should work to minimize as much as possible the effects on the surrounding neighbourhood.

Finally, the proposed legislation gives the municipalities the option of opening or closing any retail operations in their jurisdiction on Sundays and holidays. Convenience stores at present perform a public service in the community by providing access to essential items when other retailers are closed. In return, convenience stores rely heavily on the business they do on Sundays and holidays. If a municipal government decides to force those convenience stores under its jurisdiction to remain closed on those days when

they historically do the majority of their business, then they will obviously have great difficulty in maintaining a profitable operation, and many will in fact be forced out of business.

We would ask the committee to take under consideration a recommendation to protect the small stores which have historically been allowed to open on Sundays. These operations, which were established according to the present law and have served the communities in which they are located for many years, should be exempted from the provisions under the proposed legislation that would allow municipalities to close any retail business on any holiday.

That concludes our remarks. We will be pleased to answer any questions that the committee members would like to ask.

Mr. Chairman: Thank you very much. We have about 25 minutes.

Mr. Keyes: Thank you very much for the presentation by the convenience stores. It is particularly encouraging to find a group to come before us and in essence compliment the government on the proposed legislation. I would say you have done that very nicely on page 1 of your speaking notes when you do refer to dealing effectively with some of the most troublesome Sunday shopping issues. That is what legislation is supposed to do, to attempt to address those areas that have caused the greatest concern, and we believe that it has.

Two questions, since we have a little bit more time than we usually do, and we appreciate that as committee members. Could you give us just a little bit more of the background of your own employees? You talk about having approximately 11,000 people employed in convenience stores. That compares very favourably to another group that was before us today who said they had about 10,000 employees. Could we get a breakdown as to the full-time and part-time number of people in that group?

Dr. Pottow: I would say there would be about 1,500 full-time and the rest would be part-time.

Mr. Keyes: So a very high percentage are part-time. I presume a good number of them would be young people who are high school students, community college students or university students perhaps?

Dr. Pottow: Yes.

Mr. Keyes: So you have not had any problem in securing those types of people to fill the positions that are available in such stores? There is a ready market for them. They do not create a labour problem. You are not running into a lot of difficulties in finding people to work in them during those hours that you are open, whether it be 24 hours or otherwise?

Mr. Kimmel: That is not completely true. The labour force is very tight at this moment, and filling positions on weekends and in cases where there is 24-hour shopping is difficult.

Dr. Pottow: But I might add, no more on Sunday than on Monday, Tuesday or Wednesday.

Mr. Keyes: So there is no difference between one day or the other.

You did say again, just for the record, that the majority of those,

probably 90 per cent or almost, are in the category of students or young people who may be in some form of educational system.

Dr. Pottow: No, I did not say that. I said probably 70 per cent to 80 per cent were part-time, and the majority of those would be students. But there are also lots of retired people or people looking for a second job but on a part-time basis.

Mr. Keyes: Do you have any idea of the breakdown in the retired category of people across your stores? Is it becoming, in some jurisdictions, a much more prominent factor?

Dr. Pottow: Yes, there is a definite increase to what it was. As to a breakdown, I could not really give you a breakdown.

Mr. Keyes: I was interested to look at your presentation with regard to process. You have spoken of using the select committee's recommendation, under fair process, the Ontario Municipal Board. I did not have chance to read it that thoroughly, but you may not have given us some indication of what other process might be used in order to be sure that it is a fair and equitable system whereby the municipality enters into the creation of the bylaw in the beginning. Have you given a little bit more thought to that? Could you elaborate on that area? There has been a concern expressed that in the extreme, a councillor might one week indicate it and have a bylaw presented the following week. That is in the extreme. But as far as notice of motion, other referendums or anything, Have you given thought to that part of it?

1420

Dr. Pottow: Well, you appreciate, of course, that we are not lawyers by training, but have put together a few notes that I would be happy to leave with the committee on this.

Mr. Keyes: It was just, though, make brief comments, as we have a bit of time. I think that process is one that we are all very interested in.

Dr. Pottow: If you will, I would read this and pass it around or shall I do it the other way around?

Mr. Chairman: I am quite prepared to have that presented, but it would impinge on the time of all members. So, do I have unanimous consent?

Mr. Keyes: It looks like one minute.

Mr. Chairman: Oh, all right. Well, I would still like to have unanimous consent for that being additionally read, Mr. Farnan, unanimous consent?

Dr. Pottow: Is that all right, Mr. Chairman?

Mr. Chairman: Yes.

Dr. Pottow: We are suggesting to add a new subsection in section 4 and 4(5) would read: "Bylaws can be passed under this section only if:

"(a) appropriate measures have been taken to notify area businesses and residents of the proposed bylaw;

"(a) at least eight weeks time be allowed for public comment;

"(c) area businesses and residents have also received at least two weeks notification of the intended date, time and place at which the proposed bylaw will be considered by the municipal council."

And then an addition of subsection 4(6): "The Ontario Municipal Board shall be empowered to receive and consider appeals relating to decisions made under this section."

And subsection 4(7): "The Ontario Municipal Board shall be responsible to make regulations in relation to this section."

Mr. Chairman: Could we have this filed as an exhibit?

Mr. Keyes: Yes. Thank you very much because that is the type of input we like to hear from you. We believe that to have a fair and equitable process is our aim and some of the issues here, it may not necessarily be to what extent the municipal board needs to be involved in the appeal process. But certainly, the whole idea of notification so that it can be done with lots of public input, the same as we are doing for these hearings, is what we consider very significant. Thank you very much and I will pass the mike on.

Mr. Philip: I find this quite useful because I think that the point that this group is making is that the minister, for whatever reason, has introduced a bill without any appeal process. A merchant or a group of citizens who feel grieved by the actions of a local council may be able, under the present system now, to oppose an apartment building or something that is going to be constructed down the street from them, but something as important as whether or not they are going to have to work on Sunday has no appeal process. I think you have made a valuable contribution in pointing that out so forcefully.

I have a question rising from the select committee on retail store hours hearings on which I was a member. At that time, the members of the Ontario Korean Businessmen's Association, who are small storeowners, convenience stores for the most part, pointed out to us that the municipal option in British Columbia in fact lead to a number of them going bankrupt.

You point out that 20 per cent of your business is done on Sundays. Many of your stores would be what colloquially are called mom and pop shops, or family stores. Do you have any projection as to whether or not some of these people would, in fact, be put out of business if suddenly then all the large retailers were able to stay open on Sunday?

Dr. Pottow: Well, a very quick answer to that is there is a new chain in the convenience store association called the Hasty Market that had an operation in British Columbia that has just gone bankrupt. So, it not only affects the individual stores, but also affects a collection of individual stores.

Mr. Philip: Where were they located?

Dr. Pottow: In British Columbia.

Mr. Philip: So, you have one chain that has already gone into receivership as a result of the Sunday shopping municipal option legislation?

Dr. Pottow: Well, in fairness, I cannot comment on why he has gone bankrupt. But it is significant that he is operating in Ontario and he started his business in BC at the same time but has gone bankrupt. I think he implies the effect of the Sunday shopping was a great influence on its demise.

Mr. Philip: In the case of that chain, how many stores would there be?

Dr. Pottow: There were 18.

Mr. Philip: Eighteen stores in British Columbia. A similar number in Ontario.

Dr. Pottow: He has, I think, about 100 in Ontario.

Mr. Philip: Right. Both operated essentially with the same guidelines or rules and so forth. The ones in BC go under. The ones in Ontario that have the protection of the present law are still operating in a viable manner.

Dr. Pottow: That is correct.

Mr. Philip: Essentially, what you are saying is quite complementary to what the Ontario Korean Businessmen's Association was telling the select committee a year ago; namely, that a number of them were either forced out of business or they saw the writing on the wall as their profits declined. They have come to Ontario and purchased businesses here, feeling that at least they would have a way of supporting their families, and now the same people may be facing the same thing.

Dr. Pottow: Yes. The main problem with both us, as a larger chain, and the individuals is that when you change the economic guidelines, large capital commitments have already been made. For instance, a landlord is not going to allow me to walk away from a lease because, as of October or November, they have decided to open the supermarket in the plaza on Sundays. I have still committed to that 10-year commitment, and that is the same truth for me as it is for any individual. When you invest, for a typical operation, around \$500,000, you do that expecting some economic return. If the guidelines are suddenly changed, then it is hard.

Mr. Chairman: Excuse me, Mr. Philip, I just want to inquire: Can the people in the back of the room hear this witness? I am having some trouble.

Dr. Pottow: Sorry.

Mr. Chairman: Is it possible we can crank up the mike a bit?

Mr. Kimmel: I would like to add to Dr. Pottow's comment. In the 12 weeks in the fall of 1986 when the law was being contested in the Supreme Court, in a case in my own chain, we had a significant loss of volume and the profit was almost wiped to zero.

Mr. Philip: One last question, and I want to phrase this question as delicately as possible, because I have the greatest respect for the people who run your stores and the hours they put in and so forth—

Mr. Kimmel: Thank you.

Mr. Philip: It has been pointed out to us by members of some of the new Canadian groups that many of the people who come here may have PhDs from some other country. They may be medical doctors or trained professionals, but because of language, because of the problems of certification, they frequently, as a way of entering into something to support their families until their sons and daughters get their MDs that are recognized here or their PhDs that are recognized here, become the owners and proprietors of stores such as this. Many of them, if they are forced out of business, as they have been in BC, have no way of earning or find it very difficult to have a way of feeding their families and of being independent and self-sufficient.

Would you say that is a fair statement of the people who are involved in your chains who are running stores, that many of them are people who are on their way up in society, they are educated and certified in their own countries, but they are running these stores as a way of holding on for 20 years or so forth until they acquire the language skills or the certification in this country to perform the professional duties they performed in their former country?

Mr. Pottow: Yes, I would say there is a great deal of truth in that. It offers a family unit, especially in the fact that they can find employment for both the spouse and the teen-aged children while they are going to school, a family income of, say, \$80,000, which normally would not be available to a new immigrant if he just had to go to the normal workforce to try to find employment for one person.

On the other side, my company in particular has trained a great many new immigrants who have taken stores themselves in my chain and then taken the earnings they have got to put a down payment on a similar business and open their own business. A lot of our competitors have been trained by ourselves, and I find that a form of flattery. I think that if they adopt our method of doing business and it is a free enterprise system, then good luck to them.

1430

Mrs. Cunningham: Thank you for your presentation this afternoon. Recognizing that you have in the past been somewhat protected in the history of this country and province with legislation that allows you to open, you have come forth today and the comment was made to start with that you are in agreement with this bill and that you in fact are happy that roping-off enforcement problems will be taken care of with this legislation.

Assuming that the group here thinks that you are particularly happy with it, as I read into this, I am seeing that you are not really. I am looking at the significant competition you talk about and the substantial reductions in already small profit margins.

I am looking at, under Bill 113, opening up the possibility of wider-scale Sunday openings involving large outlets offering a broad range of products, and your concerns there; furthermore, about the need for changes to the Planning Act and then enforceability.

Although you say it is enforceable you talk about other issues. So I do not really think it would be fair to state that you are particularly pleased with this Bill 113 in its entirety. There are parts of it that you are pleased with. So would you clarify?

Dr. Pottow: I hope I did not mislead the committee in saying we are

happy with all aspects of the bill. What I tried to address is that the previous legislation had some large loopholes in it. The present government addressed itself to those loopholes.

We are concerned about the local option without provincial guidelines or some form of process. I find it incongruous that a town like Fergus would have as much weight in putting Sunday shopping into Ontario as the whole of Metropolitan Toronto.

Mrs. Cunningham: So you are concerned about this sort of leap-frog approach and the dynamics of a small municipality affecting larger ones.

Dr. Pottow: As I listened to the hardware people this morning, they made some comment about Bowmanville as a tourist area, I think.

Mrs. Cunningham: Yes.

Dr. Pottow: That was where one hardware store, because of competitive reasons, wanted to be open on Sunday and forced the other two hardware stores to be open. The first one, which got the law changed, in effect is now out of business and the other two have opted not to be open on Sunday.

I can foresee that type of competitive edge of increasing the local assessment base, and that is our concern. Whereas the one part of the law has been addressed in entitlement by law, there seems to be another one without tight guidelines. I think that could be a much worse loophole, shall we say.

Mrs. Cunningham: So your philosophy is where it is broke, fix it.

Dr. Pottow: That is, I think, the quote of the hardware person.

Mrs. Cunningham: Three quick questions, because I am doing a little survey here. Is your group generally in favour of a common pause day?

Dr. Pottow: We have a very vested interest in that. I think it would be unfair to answer that.

Mrs. Cunningham: That is fine. That would be the same response as the drugstores. Are you in favour of the municipal option as presented by this legislation?

Dr. Pottow: If there were guidelines to establish what that municipal option would be.

Mrs. Cunningham: Would you prefer the municipal option or would you prefer that the provincial government take the initiative in the definition of the tourist area?

Dr. Pottow: I would prefer the definition of the tourist area.

Mrs. Cunningham: Would you be prepared to help us in that definition if you were called upon?

Dr. Pottow: I would be prepared to help the committee in any way I can to make the proposed legislation more workable.

Mrs. Cunningham: Thank you for your direct responses.

Mr. Chairman: We appreciate your taking the time out to come here and to share your thoughts with us. They are provocative. I am sure they will be considered just as every presentation here is in terms of dealing with this issue.

The next group we have appearing before us is the Council of Christian Reformed Churches in Canada. Perhaps the presenters can come forward and have a seat. We welcome you.

If you could identify yourself for purposes of Hansard, I will reiterate what I said before. We are allocating 30 minutes. We hope that some portion of that will be available for questions from committee members, but we leave that up to you. If you would like to identify your colleague, then you can proceed with the presentation.

COUNCIL OF CHRISTIAN REFORMED CHURCHES IN CANADA

Mr. Van Eek: My name is Arie Van Eek. I am a minister and the executive secretary of the Council of Christian Reformed Churches in Canada. To my right is Don Wiersma of the Council of the Christian Reformed Church of CLarson in Mississauga, who represents a special committee of concern about maintaining a common pause day.

We thank you for taking the time to hear us. The council we represent is an agency working on behalf of 125 congregations in Ontario, and on their behalf we wish to thank you for the opportunity to make this presentation in favour of a common pause day in Ontario.

It appears at first glance that your committee has been given the relatively simple task of deciding which level of government is most appropriate in regulating retail hours on Sundays and holidays. We submit, however, that this issue cannot be met without reference to some fundamental considerations about the nature of our society which we are also helping to create through any amendment in legislation.

We live in a society in which economic interests tend to dominate all other aspects of being human. Economic wealth is seen by many to be the key to individual success and a good society. The move to extend shopping on Sunday is a symptom of this overemphasis on material prosperity.

Persons, please consider, are not merely economic entities. Each person is created as a complex individual with spiritual, emotional, physical, economic and other legitimate needs. Each person is also created to live with other people in a rich diversity of relationships.

Opportunities for groups as well as individuals to engage in public, noncommercial activities are severely diminished unless we have a regular, frequent, noncommercial day. For example, the experience of many of us bears out how difficult it is to have family reunions and community or cultural events unless we have such a day together.

To do justice to the complex needs of individuals and societies, governments must ensure that time and space are available for a variety of social, religious and cultural expressions in public life as well as in private life, for groups as well as for individuals. There must be adequate time for shopping activities, to be sure, but also for more personal activities. Protecting a common, regular, noncommercial day is one way that

governments can fulfil this responsibility.

The experience of retailers in the provinces of British Columbia and Alberta, not to mention the history of that stuff in other countries, bears out that communities have opened up Sunday shopping as the only way they could find to meet the drain of consumer dollars to shopping centres in neighbouring communities. Indeed, what else does the admitted abuse of the current tourist exemption in Ontario prove?

The clear domino effect in western provinces and abroad proves that open shopping indeed does its worst: It atomizes families and communities and reduces the opportunity for recreative, religious, cultural and social activities. Our denomination, for three quarters of its membership, resides south of the 49th parallel. The effect of open shopping, for example, in the state of Michigan, is there for all to see, and it bears out what we have just asserted.

The mindset of consumerism further erodes social responsibility. For all of this, government, its welfare nets and society as a whole pay a very high price. Only the wider powers of provincial governance can stimulate all-round exercise and celebration of that human potential of which we spoke.

The Solicitor General, together with a number of MPPs, has responded to our earlier interventions by arguing erroneously from the admitted current abuse of the tourist exemption to the purported responsiveness of regional regulatory mechanisms. We submit that the logical and workable solution is given by that same legislation before the House now in Bill 113. Too bad that it says more, because it speaks about phasing out the tourist exemption, and that we would like.

Let us underscore that it is to the credit of a vast majority of Ontario residents, workers, labour unions, retail businesses and communities that they value a regular, frequent common day of leisure time and activities. They have expressed this in repeated responses to opinion polls and to contrary government initiatives.

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But the government opens itself up to the suspicion that it disregards citizens' concerns and manipulates such democratic processes as we are now undergoing in the present hearings when it reasserts its determination to legislate what all strata of people reject and what violates the God-given rhythms of communal life. In fact, we underscore that all religious communities resident in our fair province have expressed themselves in their observance of one common pause day in seven.

In respect to the labour legislation proposed in Bill 114, our research and personal experience demonstrate that it is not enforceable and it is cumbersome at best. Furthermore, persons of known convictions who seek employment or advancement are passed up in ways that circumvent that legislation.

A simple law, uniformly applied across Ontario, would restrict work on the common pause day to essential services and works of compassion. By this standard, our faith communities have lived and have prospered.

We are aware, of course, that closing stores on Sunday will not automatically lead to better family and community life, and for that matter,

neither will strong rest-day legislation complete the task of the government in enhancing family life. But protecting a common noncommercial day is a part of pursuing greater justice in the major public policies that affect families. However, the government of Ontario can show itself to be actively promoting healthy family and community life by taking full responsibility for regulating Sunday and holiday retail hours.

It is for that reason that we respectfully urge the government of Ontario, first, not to allow regional governments to enact a variety of competing laws regulating retail hours, and second, to clarify, strengthen and enforce the Retail Business Holidays Act, thus protecting one weekly noncommercial day with due regard to all legitimate social, religious, cultural as well as economic institutions.

The government of Ontario has the authority to decide upon and the power to enforce fair and uniform legislation, freeing up persons and communities for recreative activities on a shared or common day. May our government also demonstrate the political will to exercise that divine calling.

I defer to my colleague Mr. Wiersma for some additional comments, especially pertaining to Bill 114.

Mr. Wiersma: I would like to make a few comments supplementary to the main presentation. The Christian Reformed Church of Clarkson in Mississauga is pleased to have a presence here today, although we were disappointed that our request to hold hearings in Mississauga was denied.

The people of Mississauga have had a great deal of interest in this matter and much attention has been given to this issue. You will be interested to know that a March survey showed that 70 per cent of the respondents stated that stores should remain closed on Sundays. Certainly such a response is a strong expression of how the government is being requested to deal with this issue.

In particular, we wanted to elaborate on the reference in the brief we just presented on the inadequacy of the proposed Employment Standards Act to counter the harmful consequences of abandoning strong rest-day legislation. We do not believe such a measure will be effective, and it is unrealistic to think otherwise.

On the broader scene of Sunday shopping in North America, it is precisely this area that has proved unworkable. Employees who do not co-operate are made to feel not to be part of the team or they are denied employment opportunities. There can be many subtle ways used in showing types of discrimination on this issue. In theory, it may appear to be a solution. In practice, we believe it will hurt those who wish to maintain Sunday as a rest day and wish only commercial activity of an essential nature to be engaged in.

We respectfully submit that it is not in the best interest of Ontario citizens to have the proposed legislation implemented, and we request the government to reconsider its plans and course of direction in this very important public policy issue. Such public policy must be provincially enacted and directed and not left to the decision-making process of each municipality.

Thank you for your time and consideration. Reverend Van Eek and I would be pleased to answer any questions.

Mr. Chairman: Thank you very much. At the outset, on behalf of the

entire committee, let me tell you that we did not shun Mississauga. It was simply a matter of the large number of delegations we had.

Mr. Wiersma: We understood, sir.

Mr. Chairman: Perhaps you would carry that back to the good mayor of that municipality so that we will not be in trouble.

All right, we have about 20 minutes. I have Mrs. Cunningham first.

Mrs. Cunningham: Thank you very much for coming today. There are a lot of people who would love to have been here to make the presentation that you made, so you should be feeling pretty good about speaking for a lot of people who are not able to be here today.

I was somewhat nervous when I first read your second paragraph, when you started to talk about appearing to have been given the relatively simple task of deciding which level of government is most appropriate in regulating retail hours on Sundays and holidays. In fact, I think that is the issue in the committee. The issue is the lack of a definition of a tourist area and whether or not the public is in favour of the municipal option. You are telling us you are not in favour of the municipal option.

I wish someone would listen to us. I am very frustrated in my position on this committee, because I am sure we will be listening to the great majority of people who will have your point of view. But we have been fairly well told that there will be very small changes made to the legislation by the Solicitor General. I hope that is not true after the committee hearings. I am sure they will be well attended by people who have great faith in government, as you appear to have.

I would like to ask you if you have ever been asked by any committee or member of the government to define in any way "tourist area," since you yourself talk about the abuse. Has anyone ever asked your opinion on that?

Mr. Van Eek: It should be said, first of all, that it would be beyond our competence, but we have at no time had any good feeling about making a distinction.

I have placed myself in rural communities that I have served and asked myself, would we in Exeter want it to be said of us that we were not a tourist area or did not want to welcome tourists? To answer the question with a counter-question is to answer it, is it not? The whole province is beautiful. All its people are good, all of them want to welcome and win friends and influence people who come across the borders from wherever.

My relatives from another country are going to find that I take them to all parts of the province, as I have time and opportunity, when they come to visit this fair province. The distinction is seated in a definition of life that basically is summed up in: "We are in the business of making money on you. We are in commerce." The consumerism that we allude to in our brief is what basically undergirds that notion of, "This is a tourist area and that is not." I do not particularly think of Yonge Street as a tourist area, any more than I do the Toronto Islands. There is a different appeal.

Mrs. Cunningham: But the issue, in the end, if we are to change the municipal option and influence the government in any way, will be to look at this definition of a tourist area, whether it be in Niagara Falls or in

Windsor. If we do not do that, I am afraid we are stuck with the local municipal option, where you yourself talk about the numbers of municipalities that will in fact be making that very decision.

Mr. Van Eek: Should it be within our competence, we would answer that a tourist area or endeavour would have to be defined in terms of what we consider to be services essential to the mobility of the tourists and to their comfort, but limited thereto.

Mrs. Cunningham: Would you be willing to participate in those discussions if we were able to get them as a result of these hearings?

Mr. Van Eek: Without clearing it with everybody and his cousin on my committees, I would go out on a limb in saying I think so. Yes. We want to be helpful.

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Mr. Chairman: Thank you, Mrs. Cunningham. Mr. Sola, then Mr. Farnan and, if there is time remaining, Mr. Philip.

Mr. Sola: I would like to ask you, sir, how do you like the present legislation? Do you agree with it or do you think it needs change?

Mr. Van Eek: It needs to be beefed up. The tourist exemption is obviously abused very widely, sir. We have already alluded a little bit to what we think the content or provisions on behalf of tourists ought to be. We are not sure if the rights of those who celebrate another day are adequately guarded. I think they are just minimally so.

Mr. Sola: But, on the whole, are you satisfied with it, just taking a broad look at the present legislation?

Mr. Van Eek: We were happy that the Supreme Court upheld the legislation as being constitutional.

Mr. Sola: OK. I would like to read a couple of definitions to you and see which one you prefer. "The council of a municipality may by bylaw provide that the law does not apply to any class of retail business establishment in respect of the sale by retail of such goods or services on such holidays, for such periods of time, in such parts of the municipality and under such conditions as are specified in the bylaw."

That is the first one. The second one is, "The council of a municipality may by bylaw permit retail business establishments to be open on any holiday or may require that retail business establishments be closed on any holiday."

Which one do you think is more clear and which one do you think is more restrictive?

Mr. Chairman: Mr. Sola, in fairness to the witness, you have just read from something. Maybe you would like to let him read it himself again.

Mr. Sola: Yes; it is in the present legislation.

Mr. Van Eek: You are reading from the current act.

Mr. Sola: I have read from both acts.

Mr. Chairman: In order to make that determination, do you need to see it in writing?

Mr. Van Eek: I am not going to put Mr. Sola in that position; we do not have the time, Mr. Chairman. I think the latter is a bit more clear. I find the first one so wide that it is open to all kinds of abuse, and I do not recall which is in which act.

Mr. Sola: The first one is in the present act; the second one, the one you find more clear, is in the proposed act. That is what I wanted to get at, because I think the second one also establishes that it can be more restrictive because the municipality may actually even close establishments.

Mr. Van Eek: Our problem with it is that, in fact, one municipality may act in one way and another in another. We live in a situation where Burlington was tending to be more restrictive under the present law respecting Sunday opening as over against the contiguous community on either side; and if push comes to shove, you know that the effect will be that the one will not knowingly see dollars drain from the marketplace to that other contiguous community. The effect will largely be opening all communities to Sunday shopping, and the municipal associations have spoken very, very clearly in a couple of instances against giving them that responsibility. We know how it has gone in British Columbia. We have many churches there; we have many people in retail business there. They all decry the fact.

Mr. Sola: I would also like to point out that we have had several delegations today. One delegation figured that 75 per cent of its stores would be closed under present legislation, and the other ones took the other, 180-degree-opposed view, fearing that everything would be open.

I would like to read what the hardware association stated in regard to the protection of workers on Bill 114. It says, "Many small business owners will have to work in the stores on Sundays because they may not be able to find suitable Sunday staff or afford premium wages for Sunday help."

These are people who do not want to work Sundays, and they are reading Bill 114 to have enough teeth that it would force people who do not want to work to work in their stores, because they would not be able to find help to man their stores under this proposed legislation.

Mr. Van Eek: I must take exception to your interpretation. What they are saying is that they will not be able to find people who will want to work on Sundays, and that will include, among others, many people who I am very comfortable with, who simply as a matter of principle will not, but if their sons and daughters, wanting to earn some money through part-time employment, for example, want to find part-time employment, they will find themselves unnecessarily being eliminated from that prospective employment pool because they put it up front, "I am sorry, sir, I shall not work for you on Sundays."

You and I do not have to fool each other about that. There are ways of asking that kind of question and getting that kind of an answer, and then learning, for reasons not stated, that they will not be employed by the employer who seeks to have somebody to keep his place open on Sundays.

Mr. Sola: Are you aware, sir, that at present 31 per cent of retail employees are employed on Sundays at least part of the time under the present legislation? Do you not believe that these people deserve some sort of protection? As of right now, they have none.

Mr. Van Eek: I am not sure if that is a question of protection. These people are working out of dire necessity. If given a choice, many of them would sooner work Friday night than Sunday afternoon.

Mr. Farnan: First, I would like to congratulate the delegation on its brief, and then ask a rather general question.

You seem to suggest that in the complex nature of human beings there are many aspects to our makeup, and that this particular legislation is going to give added momentum and direction to the economic area. I am not sure if this is included in your brief, but the concept of profit and competition, which are good things in themselves—we will not question that—if they become overconsuming aspects, it becomes unhealthy in a society, and the government seems to be moved by forces that would promote increased profits for particular groups, for whatever reason. At the same time, why would the government be doing this when all of the groups that you mentioned are saying to the government: "Please stop. Please, do not go ahead with this"?

Mr. Van Eek: You are not asking me to make a political statement?

Mr. Chairman: That is perfectly permissible here, by the way.

Mr. Jackson: You have our permission.

Mr. Van Eek: I cannot answer your question with any degree of intelligence. We are baffled and frustrated, and I think I have carried that across. There have been would-be, honest, democratic processes. I have come to another panel where Mr. Jackson was in charge, and there was yet another panel across the hall, I believe, one storey up.

Mr. Jackson: An election promise in between.

Mr. Van Eek: Was that there, too? Yes, it was.

We just do not know who has to speak how in order to represent the populace of this vast province, because you have heard people from all walks of life speaking as people. It strikes us that history books will later be written to prove that the deterioration of public life carried with it a tremendous expense, and with the mindset in the direction that government should pick up on any social dissolution and any breakup of society and of families and so on, by all sorts of social legislation, will end up facing such an insurmountably large task that society itself will not be able to carry the payload.

We want to do what we can to keep families together. We want to do what we can to have parents assume as much responsibility as they can for their children and so on.

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That is part of the pitch we are making this afternoon. Let's enhance that life of people together. Let's not say, in the name of common sense, that just one more block of four hours of shopping will enable people to live a more fulfilled life; then go to your cultural associations and ask them how they are struggling to get people to the ball field and to the concert hall and all the rest of it.

Mr. Farnan: Let me just ask a second question. You have said these

things in your brief but there was a little more emotion in what you have just said now, I think, in terms of the way it came across. Your second last paragraph on page 2 states, "We are aware that closing stores on Sunday will not automatically lead to better family life and community life. Nor will strong rest-day legislation" etc.

At the crux of your presentation—I want to get this very clear—is that this legislation will erode family values and family life in Ontario.

Mr. Van Eek: That is our considered judgement.

Mr. Wiersma: Might I add to that, just to underscore it, we recognize that we live in a very complex society and we talk about global trade and technology. I know from my 30 years of experience in industry that there are all kinds of pressures upon us to do well in business. Nevertheless, there is that balance in life and that is what we are coming with today.

We say most sincerely that the protection you propose for that element, people who wish to go a different route, will not work. I am sure you saw that extensive write-up in the Toronto Star a few weeks ago about the experience in Boston and New Brunswick. They are thinking the other way. The people who get interviewed on having a favourable position on Sunday shopping are those who do the shopping. Very seldom do the media interview those who are working in the stores, and they are the ones who are left with providing the service. The Boston experience says it has become fictional as to whether we can in fact have a choice of working on Sunday.

That is our concern and that underscores what you have said, Mr. Farnan, that we want that balance of life values continued. We recognize that there is an element of need for essential services; life is too complex. But we can define those better. Let's not open the floodgates and put it all down that road.

We really believe the provincial government needs to decide that; at best, federally, but that is a big geography. Let's not bring it down to an individual municipality. We will be back here facing problems of implementation and fallout from that kind of point of view.

Mr. Chairman: Mr. Farnan, you have about a minute left and Mr. Philip had indicated he wanted to ask something. Do you want that minute?

Mr. Farnan: Let me think about that for a minute.

Mr. Chairman: Think about it for a minute.

Mrs. Cunningham: That took two seconds.

Mr. Philip: I was impressed by your brief, particularly the point you make in the middle of page 2. Dr. Mutchmor used to say that even if he were an atheist he would have to invent Sunday. I find it interesting, when one looks at a lot of the major religions, that there is one day in seven that is left for recycling, for regenerating. We may disagree as to which day it should be—Friday, Saturday, Sunday—but even if one were an atheist, one would have to say that there seems to be something in nature or something out there that comes up with the one-in-seven formula. I wonder if you would like to comment or elaborate a little more on that statement.

Mr. Van Eek: You have said it very well and we alluded to it. I have

gone out on a limb and said, in answer to a question from another panel on the same subject or at least the broader subject of Sunday retailing, that if the government in its wisdom should legislate that it will be Friday from hence—"You Christians have had your day long enough"—then I should be the first one to fight as hard as I could to get our conservative folk to understand that it is a good way to go.

If that is public justice, that is the way we would want to go. We would say we adjust, but the rhythm is essential; and the protection of that one day for as many as possible to enjoy it to the full, and to do a better job, incidentally, in their workplace the other five or six days they do work, is paramount and not negotiable.

Mr. Chairman: Thank you very much for coming before us, as we have thanked other individuals who take time out, to provide us with your view, and we will certainly consider it in the long range, in terms of dealing with the bill.

Mr. Van Eek: Mr. Wiersma and I thank you and members of the panel.

Mr. Chairman: The next presentation is by the Retail Council of Canada, Alasdair McKichan and Mel Fruitman. Perhaps you gentlemen would identify yourselves for purposes of Hansard. As I have indicated before, you have 30 minutes. You can use either all or part of it for your presentation, but we prefer that you leave some time for members of the committee to ask questions.

RETAIL COUNCIL OF CANADA

Mr. McKichan: My name is Alasdair McKichan. I am the president of the Retail Council of Canada. With me is Mel Fruitman, vice-president of the retail council.

We are glad to have this opportunity to appear before the committee to make what I regret will be essentially a limited contribution to the committee's deliberations. I say that because we find that our membership is divided on the subject. As we outline in the first two pages of our submission, we do not have a consensus on the central issue which the committee is reviewing, but we do have some contributions to make on some of the peripheral issues which we thought it was worth making in any event.

I will take a moment to describe our constituency. We have in our membership retailers who among them perform about 65 per cent of the store business in Canada, and the proportion is about the same in the province. Affiliated with us are some 100 additional regional or specialist associations which together represent a further significant proportion of retail trade; but on this issue we have not attempted to canvass the views of either our direct members, because we know they are divided, or our affiliate members, who have also, we believe, varying views on the subject.

Touching on some of the substantive issues, first of all in section 1, we are not opposed to the changes in the names of the holidays.

On section 4, we do draw the analogy between this proposal and the existing section 4 of the present act in relation to stores within designated tourist regions. We simply report that we know that merchants whose premises are not located within such areas, yet feel they are in competition with the areas, regard the provision as having capricious and, to their mind, unfair

effects. We believe that some of the same reaction will be expressed in relation to the intermunicipal rivalry under the new legislation.

On subsections 5(3) and 5(4), we make some comments in relation to the definition of an "affiliated corporation." We suggest first that it should be made explicit that a franchisee who has substantial disposal of the decisions in relation to his or her own business should not be included in the concept of a related corporation, because if they truly have sufficient autonomy, they should be regarded as separate institutions, particularly in relation to their decisions on opening and closing.

Similarly, we suggest that in relation to affiliated companies—I am now speaking to the comment at the top of page 5—where the affiliated corporation is in a dissimilar retail or nonretail type of business, it should not be included in the definition.

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Under section 5, we allude to the fact that we do believe the intent of this section will be supported by a large majority of retailers. While we do recognize that a shopping centre needs to have some uniformity in terms of its opening hours, in the case of Sunday openings we believe that a majority of retailers would find the obligation to open on these hours irksome.

However, we qualify that reaction by saying that in the actual working out, we believe the provision will be less efficacious than it promises, because after all, landlords are in a position of considerable power vis-à-vis the retail tenants. Most retail leases are relatively short. We suggest the average in a major shopping centre, or for the length of time remaining, will be under five years. In practice, it really is within the power of the landlord to threaten, not necessarily by overt means, the termination of the lease and thereby secure the compliance of the tenant.

We do not have a brilliant suggestion as to how you fix that, but we would be delighted to sit down with the draftsman of the legislation to see if any more ingenious wording can be contrived.

Mr. Chairman: Is that an undertaking? We accept all undertakings to help us.

Mr. McKichan: Yes, we give that as an undertaking.

Mr. Chairman: Take their name and address.

Mr. McKichan: Similarly, where we recognize that a retailer is obliged to open because of a lease provision or otherwise, we suggest that the same retailer be given the right by the legislation to close on alternative hours of the same duration. Again, we recognize that the power is not going to be a completely watertight one, but it may have some element of therapy in the whole situation.

Under section 7, we do support the increase in the maximum fine and we endorse vigorous enforcement of the law.

Under subsection 7(3), we suggest that using gross sales as the only indicator of economic strength may be somewhat simplistic, because after all, the figure does tend to exaggerate the significance of high-volume, low-margin types of operation. We suggest it might be more appropriate to consider a

formula which takes account of the real economic advantage which a company derives from opening contrary to the law. Again, if we could be helpful in the drafting, we would be willing to volunteer our services.

Under subsection 7(4), we acknowledge the validity of accepting signage and advertising at least as prima facie evidence that the retail establishment was open, but we suggest it should only be regarded as prima facie evidence, because advertising can appear in error and the store may not in fact be open—and it can be media error as well as retail error—or advertising may seem to allude to a widespread area when in fact it is intended to allude only to specific parts of an area in which some medium circulates.

Under subsection 7(6), we suggest simply that the same time be used for the treatment of pharmacies in relation to all other types of retailing.

We support section 8 in relation to the proposal to permit courts to order a retail establishment to close on a holiday.

Under employment standards, we appreciate the intent of the legislation. We suggest that once the law is in operation for some time and once those concerns are accommodated to it, it probably is not going to be useful to perpetuate that right of appeal in the sense that by that time those entering the industry will be aware that there is at least a possibility they are going to be asked to work on Sundays.

In actuality, the provision is going to work with more severity against small employers than large employers, because large employers are probably going to be able to find enough volunteers within their staff to be able to accommodate the situation without problem. It is the very small employer who has only one or two employees who is going to be really pressed on the situation.

That is our submission. We do regret that the lack of a consensus in our membership does not allow us to address the central issue.

Mr. Chairman: We appreciate that. We have about 20 minutes or about six and a half each. The first person is Mrs. Cunningham. I believe she is going to reserve just a small one for Mr. Jackson or vice versa.

Mr. Jackson: I would like to welcome Alasdair. We met two weeks ago on another select committee on education, providing the government with some insights on impact to the retail council. We welcome you back today.

Alasdair, you represent large and small retailers.

Mr. McKichan: That is right.

Mr. Jackson: So to put it in perspective, you would represent, say, Eaton's department stores as well as a small family operation confined to one store with three employees.

Mr. McKichan: That is correct. We have something like 5,000 independent members.

Mr. Jackson: Could you indicate to the committee the approximate percentage of your membership now working on a Sunday?

Mr. McKichan: I would hazard a guess. I would suggest that because

of the nature of our membership it is probably quite low. I would suggest it would be under 15 per cent.

Mr. Fruitman: I would suggest probably less than that, as a matter of fact.

Mr. Jackson: Do you have national statistics in comparison to provinces which do have wide-open Sunday shopping rules, whether by local option or not, and the percentage of employees working Sunday?

Mr. McKichan: So that I understand your question, it is the percentage of the total retail labour force which is actually employed on a Sunday?

Mr. Jackson: That is correct. You are an Ontario federation?

Mr. McKichan: No, we are national.

Mr. Jackson: You are national. I am sorry. So this is a national statistic which would be under 15 per cent?

Mr. McKichan: No. I was attempting to give you the Ontario figures.

Mr. Jackson: That is what I understood. Could you give us something with respect to those jurisdictions which have?

Mr. McKichan: We do not in fact have that information, nor do I think it is relevant.

Mr. Jackson: Then would you be furnishing me with a similar response to the question about the shift from full-time to part-time? I know that is a trend in retail, but we have heard deputations say that it is an accelerated trend in those jurisdictions that have greater Sunday access shopping. Do you concur with that or do you have statistics that would bear that out as well?

Mr. McKichan: We have no statistics. I think the impression is correct that on the Sundays which are open, there is a higher proportion of part-time people working than on any other day of the week. I think that is correct.

Mr. Jackson: Very quickly then, you have covered the brief in a responsible fashion in terms of highlighting sections. That is always appreciated by committees to bring us into specific focus. However, I do not get a clear sense of where the council stands on the issue of municipal option.

In one or two sentences, can you tell us what your reaction to the legislation is? Do you support the status quo or is your organization in favour of expanded Sunday shopping? In a nutshell, what is your position? You have addressed the specifics of the legislation. I would like to get a feel for—

Mr. McKichan: The lack of focus is not accidental.

Mr. Jackson: You did apologize for your brief unnecessarily. I was just trying to be helpful.

Mr. McKichan: In essence, we do not have a consensus on any of the

points you raise, with one exception; that is, there seemed to be universal distaste for the current legislation, largely brought about by the tourist exemption feature. There are other areas of distaste, but that one seems to be more or less universal.

Mr. Jackson: If I could yield to Mrs. Cunningham, she does have some questions on that.

Mr. Chairman: A brief question, Mrs. Cunningham.

Mrs. Cunningham: As usual. On that point, I would like to ask you whether you have ever been asked to help define a tourist area for purposes of legislation.

Mr. McKichan: No, we have not.

Mrs. Cunningham: That seems to be the fault by which most people are coming in here and saying the legislation is having to be readdressed. You have just stated that as well. Would you be willing to help us there, since you are willing to help us on more specific clauses, if that became an issue for a subsequent committee or another issue for this one?

Mr. McKichan: We would be very willing to try, without any promise of being more successful than others who have laboured in that particular salt mine.

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Mrs. Cunningham: We are not sure who they are. We have heard they have done it, but we are not sure who they are.

One quick question. I know you did not want to respond to the municipal option question of my colleague, but would you be prepared to respond to the common pause day? Is your group in favour, in principle, of a common day of pause?

Mr. McKichan: We do not have a consensus on that question.

Mrs. Cunningham: No consensus on either of those; but you certainly would agree to help us with the definition of a tourist area.

Mr. McKichan: That is right.

Mr. Philip: I wonder if I can come at it from a different point of view. Would you agree that a majority of the members of your association, in setting up any new retail establishment, have to plan on an eight- to 10-year basis? You have leases that often run as long as six or seven years. You have financing of the establishment, and it may run as high as 20 or 25 years. Therefore, there is a need for your business, in the same way as for the trucking industry or any other industry that is heavy in capital, at least to have some kind of security in the rules and regulations that the government imposes on them. Would you agree with that?

Mr. McKichan: Certainly the more stability in the surrounding circumstances which affect the business, the better, and of course, to the extent that hours of opening are a significant part of managing a business, some reasonable stability is desirable.

Mr. Philip: Would you agree that this legislation, without any tight provincial guidelines or structure, in fact allows a municipal council to change—for whatever reason that municipal council may have—the name of the game, the rules by which the livelihood of your operators, your owners, are in fact affected?

Mr. McKichan: We drew the analogy of the present tourist exemption and indicated that its capriciousness was resented by the retail community, and by extension, the capriciousness of municipal determination. I guess within that, the seemingly very large flexibility that municipalities have to determine the character, I think the word is, of the business that may or may not open, in the minds of our members, does give to municipalities a great degree of power, which certainly a substantial proportion of retailers would view with some apprehension.

Mr. Philip: Would you agree that the present legislation, in the absence of any clear definitions, opens your business to the fluctuations that would happen with the changing of councils, with the changing of mayors, and therefore creates a more unstable environment for your business than would legislation that would clearly set down the guidelines under which municipalities would have to operate in this area, in the same way that the province legislates guidelines with regard to the Planning Act and environmental acts and so forth?

Mr. McKichan: Yes, I think our members would value greater consistency and assurance of some more predictable behaviour.

Mr. Philip: Would you agree—and this is my last question—that this legislation in fact creates more instability than even the present legislation, with all of its faults and with all of the problems that we have experienced?

Mr. McKichan: Yes, I think that point is right.

Mr. Chiarelli: First of all, I want to thank you for being forthright with your comments and indicating there is no consensus with your organization, but there appears to be a thread going through your comments, and it relates more to enforcement and process than substance, that perhaps if we had stronger enforcement, and you have indicated that you do support stronger enforcement, that could be a plus in this whole area.

With respect to process, you have indicated you might want to drop the employee's right of appeal. Is there any other part of the process that you could recommend in terms of improvement or adding to the legislation that might be useful to us?

Mr. McKichan: I guess in terms of the point which was made by Mr. Philip in relation to the scope given to municipal councils, which is a very wide one, I think if that were narrower, and if there were greater direction as to the action and the basis for any discrimination among classes of stores, that would be helpful.

So far as the employee situation is concerned, I guess in reality the situation in so far as the worth of that provision is probably very much the same as we alluded to in relation to the power vis-à-vis shopping centres. The notional protection is there, but in the day-to-day reality of living, that protection may be ephemeral.

Mr. Chiarelli: I would like to come back to another comment you made with respect to section 4. You indicated "widespread dissatisfaction with the working of the present section 4 of the Retail Business Holidays Act in relation to the treatment of stores within areas designated as tourist regions by a municipal bylaw. Merchants whose premises are not located within such designated areas, yet feel they are in competition with those who are, regard the provision as having capricious and unfair effects." Are you referring to the domino effect there?

The second part of my question is, do you think the fact that the legislation includes regional municipalities in terms of bylaws will assist this in some way?

Mr. McKichan: To answer the first part of your question, no, we were not primarily thinking of the domino effect. We were thinking of the situation where one shopping location was designated as a tourist area. This is particularly sharp in large urban areas where a tourist area borders on a so-called nontourist area, yet the same tourists migrate from one area to the other. That is regarded as particularly unfair by the merchants in the nonfavoured area.

Mr. Chiarelli: It is unfair to the consumer rather than to the merchants.

Mr. McKichan: No, unfair to the merchants in the area that is contiguous to the area that is open but is obliged to be closed.

Certainly, the domino effect will be somewhat reduced by reason of having larger areas involved in the decision-making, but not entirely. For instance, I would suggest it is realistic that not only the greater Toronto area but indeed all the surrounding municipalities would probably feel obliged, for competitive reasons, to follow the suit of any one decision made within that area. Obviously, it is a lesser impact the more isolated the community. In the Golden Horseshoe area, for instance, I would think the way one goes, so goes the other.

Mr. Chiarelli: Just one short question additionally. Are you happy with the enforcement provisions in the new bill, or do you think they should go further?

Mr. McKichan: As we say, we think there are good points in it. We think the fact that the fines are increased and enforcement is going to be stronger, we assume, and the fact that there is going to be some specific relationship to the volume or the profitability of the business is positive.

Mr. Farnan: I apologize if this has already been asked. Would you tell me what percentage of retail employees currently work on Sunday?

Mr. McKichan: In Ontario, I suggest it would be quite a small percentage. I would suggest certainly under 10 per cent and perhaps under five per cent.

Mr. Farnan: It seems to be quite in contradiction with some of the figures that the government has been suggesting in terms of 30 per cent of retail employees working on Sundays.

Mr. McKichan: I guess it depends how you define "retail." We speak for the store trades, people who actually operate stores. If you include

restaurants and so on in the retail figure, you will get a much larger statistic, obviously.

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Mr. Farnan: But obviously, if this law were then to result in similar kinds of happenings as have occurred in other provinces, and many of the large urban municipalities go for the municipal option, we can anticipate very significant increases in the number of retail employees who will work on Sundays.

Mr. McKichan: Yes, although I think it is realistic to assume that quite a substantial percentage of the additional hours worked on Sundays would be worked by people who either have a limited number of hours during the rest of the week or else do not work in retail at all in the rest of the week. In other words, I think there would be quite a big cadre of people recruited just to work on Sundays.

Mr. Farnan: Yes, but the reality of the matter is the answer is yes, significantly more people will work on Sundays.

Mr. McKichan: That is correct.

Mr. Chairman: Thank you, Mr. McKichan and Mr. Fruitman. We appreciate your coming and sharing your information with us. We have noted a few undertakings on the record. We appreciate your input.

The next delegation is Paul Magder of Paul Magder Furs.

Mr. Philip: The one man who is better known than all the members of the committee combined.

Mr. Chairman: Would you like to come forward, Mr. Magder? Simply have a seat and identify yourself for the purposes of Hansard. As I indicated before, you have 30 minutes. You can use all of that for your presentation if you wish, but we would prefer that there was time left over for questions to be asked by members of the committee.

PAUL MAGDER FURS

Mr. Magder: My name is Paul Magder. I represent myself, Paul Magder Furs. I represent myself as a small businessman and also as a consumer, I believe. I do not represent any special-interest groups, lobbyists or what have you. I am here of my own choice and I thank you for having me here.

I would like to read you a small brief. I am not very good at reading, but I will do my best. Also attached to this brief is a copy of an advertisement by Paul Magder, Hy & Zel's and National Sports Centre, if it is of any interest for you, and a very interesting letter of support I had from Bobby Ratcliffe of Mississauga.

This is a letter of support, one of very many letters of support from all over Ontario, in fact even from out west in Canada and so forth. I am not going to read this. I leave it with you just to read it. I think it is rather interesting. This is an individual who expressed his point of view and gave me a small donation, which I thought was quite kind of him.

I may wish to make one or two comments after I read my brief, but I will

start with reading my brief. I am going to address both bills, Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act. I will start now.

I believe the Retail Business Holidays Act must be repealed because it does not do for the retail industry or the consumer what it was intended to do. Due to the great number of exceptions, it is by no means creating a common day of rest. In fact, strangely enough, this particular law actually is the cause that forces people to work against their wishes, the same law which is to protect workers, those people who do not wish to work on Sunday.

Strangely enough—and I have been at many meetings and discussions on this—only 25 per cent of the people who visit Harbourfront are true tourists, meaning they are not from Toronto, they are from outside of Toronto, the United States or wherever. It is strange they call it a tourist area and yet not even the majority of people are actually tourists. I call it a rich man's playground for Torontonians, especially with the parking rates the way they are.

When the city of Toronto declared Harbourfront a tourist area, it meant that employers could and did require their employees to work on Sunday. If I am not mistaken—I could be mistaken, and I apologize if I am; I am just going to elaborate—when the city of Toronto declared Harbourfront a tourist area—and I fault the province, because it is the father and I guess you could call this bylaw the child of this law—it said: "Well, fine. Harbourfront's allowed to be open. That's it."

So what happens is the boss says: "OK. You have to work tomorrow. You have to work Sunday." "I don't want to work." "You have to work or you'll be fired." By the way, I have checked. I believe they get regular pay, as they do at the duty-free shops at the airport. They do not get time and a half; they do not get any bonus, reward or whatever. Funnily enough, the law actually forces a lot of people to work. It probably forces a lot of people who cater to the people who do not want Sunday shopping who go to the restaurants, gas stations and all these other things. I could go on and on.

Many of the products now being sold in drugstores, such as cameras, hardware items and groceries which you may not buy in a large supermarket, are prohibited from being sold in other respective stores such as hardware and camera stores.

The Chinatown West bylaw is the most discriminatory bylaw ever created, which the government of Ontario is responsible for, because it wrote the Retail Business Holidays Act. In fact, during my court trials, I believe the Law Society of Upper Canada, when it gave its material to the government at that time, cautioned the government not to make tourist areas which are discriminatory. However, this is exactly what happened, even against advice from the government itself. Of course, I cannot fault the current government. This is the previous government.

In my case, the tourist component of my business represents more than 50 per cent of my business year-round. At this time, in the summer, I would say it is more like 80 per cent. Without the tourists, I am not even in business. There is no more Paul Magder Furs; not, by any means, on the scale it is right now.

Some people have suggested that I move my store to Harbourfront because it is a tourist area. Funny; I am in a tourist area but I am not allowed to do

business in a tourist area. If I was at Harbourfront, I would be allowed to do business. In case any of you people here are not aware, I am geographically, physically, in Chinatown West. I am not on the outside or around it or whatever; I am in there. This has been brought up in court with proof and evidence.

This would not work, because if 25 per cent of the people who visit Harbourfront are tourists, I would lose a lot of business even if I theoretically could move down to Harbourfront. Of course, you know my store is located in a tourist area. I am starting to get repetitive.

If I were in any other tourist area—currently in Ontario there is downtown Windsor; there is Acton. I am sure every American knows Acton; that is a famous tourist area. They must ask them when they cross the border: "Are you going to go to Acton?" "Where's Acton?" In England, I guess. But this is how we have these strange things in Ontario. We are very unique here.

Many provincial court judges have ruled in the last few years that the Retail Business Holidays Act is unconstitutional. In fact, I think it was Syd Harris in my particular case who said the government was ultra vires; it was based on religion. The judge—I did not even need a lawyer at that point; I could have asked him to go home and saved money—was very annoyed and very upset with the crown attorney because he said it is based on the Christian religion, which the provinces have no right to do. It is just the wording is a little bit different.

Also, it was prohibitive legislation, which was incorrect. The provinces may regulate but may not prohibit. The law violates the Charter of Rights and Freedoms, the Canadian Bill of Rights and, in all probability, the British North America Act. Even the Supreme Court of Canada has said this law is discriminatory. In my particular case, it said the law does discriminate against me, but it is justifiable. This is rather scary. I have a hard time accepting that. I was born in Canada, I worked hard all these years and here you have a government which is discriminating against me. The police agree with me, funny enough—as individuals, of course.

I cannot understand this law. Some people say the majority of people do not want Sunday shopping. If they do not want it, it is very simple: Do not shop on Sunday or do not even go to the merchants who are open on Sunday. I personally believe that is wrong. However, I believe in Ontario the majority of people do not smoke. I believe one of the biggest problems in Canada, if not Ontario, is the mortality rate caused by cigarette products. Tobacco products are exempt. I could sell tobacco products on Sunday legally. That is all right, that is OK. I cannot understand that. It does not make sense. Whatever happens with these hearings, at least tobacco products should not be sold on Sunday. At least, I would feel I have achieved something, even if I lost.

Mr. Chairman: You could say that.

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Mr. Magder: You do not even allow smoking in this room because it is unhealthy. Of course it is unhealthy. There are 35,000 people a year, if not more, dying in Canada from tobacco products. Nobody dies from wearing clothing or fur coats, as far as I understand. Maybe some animals do, but not the people, at least. Anyway, I cannot understand it. Maybe one of you ladies or gentlemen can explain that to me.

Of course, lottery tickets can be sold. People have lost their houses and their earnings and have even gone to jail because of lottery tickets. I do not think anybody has gone to jail from buying clothing on a Sunday, but lottery tickets have destroyed some families. People get carried away. I do not know. I guess the government makes a lot of money on lottery tickets. Maybe that is the reason. I cannot understand it. This law is wrong and it is unconstitutional. This law causes disrespect of laws in general. The Retail Business Holidays Act must be repealed.

Now I would like to address Bill 114, An Act to amend the Employment Standards Act. Personally, I believe Sunday is special for many people. Actually, it is special for me because I get the nicest people in my store on Sunday. I love working on Sunday. If there was only one day of the week I could work, I would work on Sunday. People seem to be more relaxed. Families come in and everything. That is my personal belief, and I feel I am entitled to that. I can go to the racetrack on Sunday. I can go dig in the garden or whatever, but that is my business. It is my choice, if I wish to work.

If Sunday is special, as the government claims it to be—and I believe it is—why not make laws to protect retail workers from being forced to work? I believe the government is proposing this, and I commend it for that. I think this is very, very important. We must have laws to prevent landlords, mall owners or whomever from forcing merchants to open.

I will get off the Sunday issue. For instance, in Dufferin Mall, I believe they have to stay open every night of the week, even Saturdays. I think this does as much harm to the families as working a few hours on a Sunday night. I talked to one gentleman from one of the big stores there. The store would not sign a lease unless they made it so that all the small stores would be open. They have the little fish bringing all the people to the big store. I think that is wrong and disgusting.

If malls are allowed to regulate hours, it should be a very bare minimum, maybe from 10 to 5 or something a little more sensible and reasonable. You can imagine selling bikinis in the wintertime and being forced to stay open every night of the week. It does not make sense. It is not fair and not right. I blame the government of Ontario for this situation.

I have heard some labour people claim you cannot make laws to protect workers, you cannot make laws to stop merchants. This is a bunch of nonsense. If you can make a law that you can charge me \$10,000 for being open on Sunday, and if you can make a law that if my dog pees on the neighbour's grass, it is illegal, surely you can make laws. Of course you can make laws. You can do anything you want, whether it is right or wrong. You have that power.

The government of Ontario has no right to dictate who shall work and who shall not work or where the consumer can shop. To do so is not correct in a free and democratic society. If the government insists on regulating store hours on Sunday, it must give the people of Ontario a chance to decide this matter by means of a plebiscite. I would like to elaborate on this.

Right now, everybody is talking about free trade, and everybody wants to vote on it. It is funny, nobody wants to vote on Sunday shopping. I personally feel that even if 90 per cent of the people did not want to shop on Sunday, that does not give them the right to take the right away from the people who do, or who wish to work on Sunday.

I personally am not a sportsman. I do not go to the Blue Jays games or

the hockey games. I am just personally not interested. That is my choice. But I do not turn around and say, "You can't go to a Blue Jays game," or "You shouldn't go."

I do not open my store in the evenings, except Thursdays and Fridays. I could turn around and start a big lobby group and say: "Let's preserve the family. All stores have to close at six o'clock." I do not have that right, and I do not think anybody has the right to take my rights away from me. I think this is wrong. The responsibility of government is to ensure that people who wish to work on Sundays can work, and those who do not wish to work are protected from coercion to do so.

That is my brief with a little bit of elaboration. I am sorry; I get a little excited. If you had been charged 375 times, you would get a little excited too.

Just to make a couple of more comments, on religious grounds this law discriminates against Muslims and other nationalities, or religious groups or affiliations that choose a day other than Saturday or Sunday. This is another thing for which I will fault the law. I would suggest, why not make a guaranteed pause day and let you choose your own pause day? When you go to work, you can sign a paper and say what it is. Myself, I would choose Wednesday. I like Wednesday off, not for any religious reasons; I kind of like Wednesday off. You may want Sunday and you may want Saturday, and so on and so forth; this is if you wish to guarantee a pause day.

It should apply to everybody. I do not know what this business is about retailers, as if we are the bad guys. Duty free shops at the airport force people to work Sunday. They sell liquor at six o'clock on a Sunday morning at Lester B. Pearson International Airport. They say, "That is federal property." I look at the map and I see that Pearson airport is right in Ontario. The people who work there live in Ontario and they do not live at the airport. I think this is ridiculous. If this law is to be common, at least everybody should be closed. Paul Magder would be very happy if everybody closed. I would be happy to go along with it, but when I see my neighbour across the street selling linen and all the other Chinese merchants around me open, I cannot handle that.

Anyway, maybe you have some questions.

Mr. Chairman: We have some people who are interested, Mr. Magder, in asking you questions.

Mr. Philip: Mr. Magder, you have certainly given very good testimony concerning what can happen with a municipal option when it is applied even to a very limited area, and how it can be open to municipal capriciousness in your own case.

Mr. Magder: Yes, it will not work. In fact, I think the government's approach should be—it may be embarrassed, but I think the law has to fall. They should bring in a new law to protect workers and merchants.

However, I think municipalities possibly should have the right to set their own store hours if they wish to close. It should be done in that way. If a certain municipality wants to close things up tight, that is its business, but do not take away the rights and freedoms from us, which the government of Ontario has done, or the past government has and the current government is perpetuating, and then say, "If you get together and lobby us, and get the

churches, the unions, big-interest groups and special-interest groups together, you might get your way." I think that is wrong. I think in Canada we have to respect the individual, besides corporations and special-interest groups that are the instigators of this particular law.

Mr. Philip: One last question because I have had an opportunity to question you on a number of occasions: The minister is basing her argument for this legislation to a large extent on the fact that, she says, the present law does not work. She cites the tourist exemption as one of the areas.

Under questioning the first day, she admitted that she had not sought the advice of the Association of Municipalities of Ontario how the tourist exemption laws could in any way be changed. One would think that, since you are the one who is claiming the most to be victimized by the present tourist exemption law, you would be a natural source of advice for the ministry. Has anyone from the ministry asked you what changes you would make in the present tourist exemption law if it were to remain on the books, but be altered in any way? Has anyone asked you for any help, assistance or advice on what could be done to make the present tourist exemption section of the present act more workable?

Mr. Magder: No, I have not been asked that particular question. I have been in touch with David Peterson's office over the years. I have even discussed this issue with him personally, but on the total issue—

Mr. Philip: That was on your initiative, not on his.

Mr. Magder: Yes, only on my initiative; I personally was never asked. I think everybody in this room realizes—in fact, Judge Syd Harris was quite upset with the crown attorney at the time. He said, "Either it is a tourist area or it is not a tourist area."

The most ridiculous thing about this bylaw is that people who do not even sell to tourists are allowed to do business. In fact, lately, I have had some Chinese customers who feel so bad about this situation that they support me by buying their fur coats from me. They feel it is wrong that the Chinese are allowed to open, legally or illegally, whichever the case may be, but I am not allowed to open. A lot of people, no matter what nationality, religion or background, have a sense of fair play.

This law is wrong, especially the bylaw. I blame the Ontario government because it is the one that created this law and allowed the—I believe it even has to approve the bylaw, if I am correct. Is that not correct? It must approve the bylaw when it is brought forward.

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Mr. Philip: No.

Mr. Magder: I am not certain. At this point, city hall keeps passing the buck and all the politicians seem to pass the buck. They say: "City hall says it is up to the province. We are waiting to see what it will do." I have applied many times for my own exemption. A tourist area should be a tourist area for everybody.

Mr. Philip: I want to give Mrs. Cunningham some time. How much time do we have?

Mr. Chairman: Three minutes, but I am going to move to Mrs. Cunningham first and then I will return.

Mr. Keyes: I believe Miss Roberts—

Mr. Chairman: I did not see her hand.

Mrs. Cunningham: Mr. Magder, if we were requesting your assistance in defining just exactly what a tourist area was, you would be prepared to help us as far as possible.

Mr. Magder: Of course I would be. I am unhappy with the law. I will help you anytime. Whether you listened or not, I would try.

Mrs. Cunningham: Yes. You do not seem to be very happy with the fact that the province of Ontario now has the jurisdiction for defining a tourist area, or otherwise, and the law is in its hands now. Would you be happier if the municipality had the responsibility for defining what hours you can open and close?

Mr. Magder: I am sorry. The municipalities were the ones—actually, the government was correct when it said it—that actually had this right. The only thing the government is doing is changing it. Instead of tourist areas, it is just saying, "We can declare, let's say, downtown Toronto, and allow it to be open," whereas before they had to be tourist-oriented or tourist-related.

Mrs. Cunningham: Right. Now the municipalities will have the option of deciding whether you are open or closed based on their criteria. Are you happy with that?

Mr. Magder: I am not happy with this because I think it is going to lead to a lot of abuse.

Mrs. Cunningham: OK.

Mr. Magder: You could have the same situation you have in the Dufferin Mall where that large merchant—I forget who he is; one of those big stores anyway—says, "We will not do this unless you do that," and so on and so forth. It enables a lot of things to be done that are not correct as far as I am concerned.

Mrs. Cunningham: You would be happier to be included in looking at the definition of the tourist region, if that became the issue, than in giving this whole responsibility to the municipality as to whether you stay open or not.

Mr. Magder: If it must be done at all, you may as well do it on the basis of a tourist area. As you know, I think everybody has the wrong idea. If you allow Sunday shopping, everybody will open and they will have to work. I think the marketplace will decide. Some businesses will open and some will not; some will flourish and some will flounder.

Mrs. Cunningham: Given this law, the municipality will decide, given what we are talking about today, and that is what you are here to speak to, Bill 113.

Mr. Magder: I do not think this is going to work.

Mrs. Cunningham: OK.

Mr. Magder: I think the provincial government has got itself into such a mess that it is trying to get out of it.

Mrs. Cunningham: That is right.

Mr. Magder: I personally feel the law should just grow and protect workers. That is my personal opinion.

Mrs. Cunningham: I think I heard you talk a little bit about families and yourself and what you like to do. Are you in favour of a common pause day?

Mr. Magder: I think it is up to you to choose that yourself. With families, it amazes me how nice, happy families come into my store on Sunday. You know, everybody says Sunday shopping destroys—

Mrs. Cunningham: No, I am talking about as a worker. For your workers, a common pause day is a day people would spend with their families. That is the definition.

Mr. Magder: I do not see how you can make a common pause day. I think a pause day should be guaranteed, but that should be guaranteed for everybody. Where this law falls apart is that it is not universal. I think everybody should have the right to choose; anybody. For instance, most of you ladies and gentlemen are not prohibited from working on Sunday; is that correct? Are you yourself prohibited from working on Sunday?

Interjection: Our constituents do not let us.

Mrs. Cunningham: In our job, we spend a lot of time on Sundays.

Mr. Magder: Of course.

Mrs. Cunningham: I am not prohibited from working; as a wife and mother in evenings either, or all night.

Mr. Magder: That is the name of the game, but I object to people, such as yourself, who will say, "I cannot work Sunday, but you can." I think this is where the law is wrong.

Mrs. Cunningham: On the question of the common pause day, if you had a choice, would you choose a day to spend when your children are home from school or when your children are at school?

Mr. Magder: I think that is up to the individual.

Mrs. Cunningham: No, you; I am asking you. What would you choose?

Mr. Magder: How can I be with them if they are at school? It does not make sense.

Mrs. Cunningham: So the answer to the question is you would choose to be home on a day when your children are home from school as your common pause day, if you had one?

Mr. Magder: Well, my children are grown up.

Mrs. Cunningham: When they were younger.

Mr. Magder: When they were younger, I was with them on Sunday.

Mrs. Cunningham: OK. I understand that you would choose to be home with your children, and the reason you would now choose Wednesday is because your children are grown up.

Mr. Magder: That is correct.

Mrs. Cunningham: Correct. Thank you.

Mr. Chairman: All right, Mrs. Cunningham, you have reserved a little time for Mrs. Marland—she had her hand raised—but I am going to go to Miss Roberts.

Miss Roberts: Thank you very much for your presentation, sir. I enjoyed it and your forthright explanation of your particular position, but I would like to maybe pin you down just a bit further. In fact, I am going to make some comments on the way I believe you think about this particular situation: we should not have the Retail Business Holidays Act at all. That should be abolished completely.

Mr. Magder: I feel it has to be abolished because there are so many loopholes and inconsistencies. Even the police all agree and think it is ridiculous, as individuals of course. They say, "The mayor likes Harbourfront and he declares Harbourfront a tourist area."

The Americans come into my store and they cannot understand why they cannot go shopping at the Eaton Centre. They have their pockets full of money and credit cards and they leave one day earlier. Millions and millions of dollars are not left here. We have to make up our mind.

Personally, I hate working, period. I think the ideal situation is that the government should send everybody a cheque for \$2,000 tax-free. Nobody should work. But the real world does not work like that.

Miss Roberts: Let's get back to the real world then. You would indicate that you do not want to have any regulation for Sundays and for holidays.

Mr. Magder: Excuse me. I would disagree with that. I would suggest that the government of Ontario be brave enough to change the law. The Japanese are such a success because they copied and improved; actually, even Great Britain is changing, believe it or not, where we got all these funny ideas from in the first place. They could change the law. Let's keep the law, if we wish to, as they did in Massachusetts, where they allow people to work, but you must pay time and a half. I think they start at 12 o'clock or something like that.

I would say if you want to keep Sunday special, reward people who want to work Sunday. Make it that they cannot be forced to work and cannot be forced to open, but if they do work, I think the people in the duty-free shops or any other job should be paid extra pay. It should be fair. That is where this whole thing falls apart. I think that would be the way of handling it, and fine very heavily merchants who force people to work or force other merchants to open.

Funnily enough, you will probably wind up in the same situation as or similar to Boston: some are open; some are closed. It all depends on the kind of business. I personally do a lot of tourist business and that is why I am open Sunday.

Miss Roberts: In your presentation, you said you wanted to have the Retail Business Holidays Act repealed. Indeed, you do not want to have it completely repealed; you want to have something dealing with Sunday and holidays from the point of view of the worker.

Mr. Magder: Yes; of course that would be the approach. The way I feel is that the government does not even want to move at all on the act, except to throw it to the municipalities. They want to get tougher on it, come down with heavier fines.

As I said before, I do not understand why tobacco products stores have to be open on Sunday. I went to visit my mother. It is funny; I can even work Sunday and still visit my own family, too, my mother and my sister. It still works. If you want to, you can do anything. I can even show up here during the week, away from my business too, if I want to.

I thought it is was rather interesting. I bought Chinese food for my mother, and of course all these people have to work in these Chinese food stores and all these other stores. Nobody cares about their families. I guess they have no kids or something. It is always the retailer.

The funny thing is there are two variety stores open and there is a drugstore there. Believe it or not, the drugstore is closed. They close on Sundays. Why does the government not make a law that the drugstores have to open on Sundays to serve the people, because they are supposed to be selling medicines and things that we really need badly? The variety store can sell the cigars and cigarettes that kill people, but the drugstores are not even open to help make them better. It does not make sense.

Mr. Farnan: I am beginning to get a realization of why you have been so successful in the courts—

Mr. Magder: Thank you for the compliment.

Mr. Farnan: —because I do not know where you stand.

Mr. Magder: Maybe I should be a politician then.

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Mr. Farnan: Basically, I am having some problems. A lot of the language you use in terms of the individual, the options for the individual and, "Let the individual decide," is juxtaposed against a statement you made very briefly, "If everybody closed on Sunday, I would be all for that." How serious was that statement?

Mr. Magder: It is serious in this way: then, at least, the law would be fair, even though I feel it does not make sense. It hurts me in my particular business when the furriers and a lot of merchants in all the other tourist areas are allowed to open—it was brought out in court on videotape—legally and illegally. In fact, the judge was quite upset at the time, when he saw this. He pointed out to the crown that the law is not even being enforced.

This is what bothers me. If everybody was closed, fine; I could not complain. Even though I think it is stupid, it is all right. But I think it is absurd when you can buy linens across the street and I have Americans wanting to buy fur coats from me. I pay taxes and collect taxes just like everybody else. The government even charges you taxes on Sunday too. There is no such thing as Sunday when it comes to taxes.

Mr. Farnan: This is the difficulty I have. On one side, we can see the fairness of the blanket law that closes everybody, no matter how silly it may be. On the other hand, going to a more individualistic approach that says, "Well, let people choose their pause day," is really going to an extreme that is as absurd, because we are all interconnected socially.

You have admitted that your family is grown, etc. There are the pressures my colleague the member for London North (Mrs. Cunningham) mentioned in terms of families wanting to be together. Not everybody has the luxury of determining on a purely individualistic basis what his pause day will be.

Mr. Magder: I think the government could try—I am not saying it will work—to allow them to have that choice. If a Muslim wants to choose Friday, he should be allowed to choose that day. When I say "guaranteed pause day," that does not mean you would have to take that day, but you would have the option to take it. Orthodox Jews do not work Saturday, yet you have many Jewish people who do work Saturday because they choose to do so.

Mr. Farnan: On the contrary, we heard delegates earlier today from the Council of Christian Reformed Churches in Canada who argued that they would support Friday as the common pause day, if that was the general consensus of what the pause day in the week should be, in order to keep this balance of a pause day.

I do not know what the situation would be if one went to Israel. Would there be a consensus for Saturday? If one went to Morocco, would there be a consensus for another day? There is a great fear of introducing the religious or Christian dimension into the debate, for whatever reason, but are we denying the fact that, historically, we are living in essentially a Christian society, and not only Christians but non-Christians and atheists have come to the general agreement that Sunday is the common pause day and that this is something we would want to protect?

Mr. Magder: First of all, the government of Ontario, constitutionally, has no right to bring religion into it, no matter how it does it: underhanded, overhanded or directly. That is unconstitutional and it is wrong, whether it agrees or not. It has no right. This was brought out in my court case.

Second, I do not know if you are aware of the Charter of Rights. The Charter of Rights guarantees the multicultural aspect of our society. That takes into consideration Muslims, Hindus, all these other people whom we never even knew about or heard about many years ago. We only saw their country on the map somewhere. In fact, I heard on the radio or TV the other day that they say there is going to be more non-WASP or whatever you want to call it, English-speaking people; there will be more Indians and Sikhs and everything else, actually a higher percentage than the traditional white Anglo-Saxon Protestant.

Everything is changing. We have to respect that, and I think the way to respect it is to allow people to do individually what they want to do, as long

as they do not force somebody else to do it. I think we have to realize the world has changed. Even this law is a problem. The law made a lot of sense, or more sense when it came out, but times have changed. Everything is changed and changing. So I think this is where your problem is.

Mr. Chairman: We will move on to Mrs. Marland for three minutes.

Mrs. Marland: When you say the world has changed, I am sitting here very interested in hearing your comments today because I was on the Progressive Conservative task force that you appeared before in 1986 and you have changed since 1986. In 1986, I asked you what you did on Sundays and you told me that you spent time at home with your—I think at that time it was two—boys and that you sometimes took them to the zoo. I remember your saying that.

Mr. Magder: I do not remember. You do.

Mrs. Marland: I remember it very clearly, because my question was very important to me and to the people that I represent as to what you did on Sundays with your personal family and what option the people who work for you on Sunday had to do with their personal families. I am wondering now whether you would tell us whether or not you pay your staff more to be open on the Sundays that you have been open in the last two or three years.

Mr. Magder: That is a good question, because I made a personal position. I pay time-and-a-half wages. I have done that from day one, because Sunday is special to a lot of people. I think in that way you do recognize and keep it special and you reward people. They come to work from 11 to 5 or 12 to 6 and, after all, they have to get all dressed up and everything. I think they should be rewarded. I think it is disgusting that you have stores—I will not mention names or anything—that have people come in and they do not pay them any extra. I think that is wrong and I think it is the government's responsibility to make a law, such as they have done in Massachusetts, to pay them, reward them, and possibly even give them premium commission, if they are on commission.

The reason I like this approach is not so much for Paul Magder, but I think for everybody you will not take away—there is the argument that you are going to take away business from the week. In my case, I do a lot of tourist business, so it does not hurt me; it helps me. On the other hand, for the businesses that may take away business from the week, that way you will allow more people to take Sunday off by making it a little more costly, in that respect, to run your business on Sunday.

I think this is a more sensible approach.

Mrs. Marland: Just to pick up on my colleague Mr. Farnan's comment too, I was encouraged at the end of your presentation this afternoon to hear you say, almost offhandedly, I realize, that you would be happy to close on Sunday as long as everybody else does.

Mr. Magder: Yes.

Mrs. Marland: Since we live in the kind of world that we live in, where there are so many different religions and even people with so many different families and family living styles and so forth, while we still have a traditional work week of Monday to Friday and a traditional school week of Monday to Friday, would it not seem logical that there is no practical way

that everybody can become accommodated with their individual choices, that we do have to live and govern by a consensus of the largest majority?

Mr. Magder: No, I think that is dangerous; it is very scary. The majority of people are Roman Catholic. You cannot turn around and say we all have to be Catholic or follow the Catholic point of view. I think what I am proposing—nothing is perfect, but I think we have to protect people, allow them to choose their individual day.

You say the tradition and everything. I had a gentleman call me and say: "I work at General Motors and they force me to work Sunday. I'm going to phone Ed Broadbent. I don't like what they're doing to me. Nobody cares about my family." Why do you have to build cars on Sunday, or the steel factories? So many people do work on Sunday.

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What annoys me about this law is that it makes the retailer look like the bad guy. They are not bad at the duty-free shops where they are selling perfumes, cigars, cigarettes and everything else and force their people to work, but I am a bad guy because I want the right to be open on Sunday. This is what I feel is wrong about this law. I do not know what the answer is completely.

Mrs. Marland: But you did say you would be happy to be closed on Sunday if everyone else was.

Mr. Magder: Yes.

Mrs. Marland: You are agreeable to equity.

Mr. Magder: Except for maybe hospitals, police forces and fire stations. If everybody was closed, of course: the duty-free shops, the tourist areas, everybody. It is stupid but at least it is fairer.

You cannot say some people can drive fast and some cannot. A policeman can drive fast. Fine. But you cannot pick and choose, and that is what this law does, unfortunately; maybe not intentionally, but this is what has happened. The government is trying to be good to everybody but it does not work that way.

Mr. Chairman: On that note, we thank you very much for coming forward and sharing your views with us.

Mr. Magder: I would be happy to help the government any time. I am available.

Mr. Chairman: As with all the presentations, they will certainly be given consideration by this committee.

The next delegation is Scarborough Town Centre Retail Employees, Colin Waring. Would you come forward and have a seat and identify yourself for the purposes of Hansard? You were not here before when I explained this to the other people presenting. We have scheduled half an hour. You can use any or all of that time for your presentation. It would be preferable if you left some portion of it for questions from the committee members, but we leave it wholly up to you as to how you proceed. Please start by identifying yourself.

SCARBOROUGH TOWN CENTRE RETAIL EMPLOYEES

Mr. Waring: My name is Colin Waring. I am a retail worker in Eaton's in Scarborough Town Centre.

I would like to say good afternoon to the members of the standing committee on the administration of justice and I would like to thank you for allowing the presentation of the following opinions and concerns made on behalf of those in the retail business. This includes employees, managers and proprietors, particularly those of us in the Scarborough Town Centre mall.

Our opinions and concerns reflect directly on the provincial government's intended passage of Bill 113 and of Bill 114. These two pieces of legislation directly affect the lives of those of us in the retail business.

An ad hoc committee of retail employees in Scarborough Town Centre mall has felt it is imperative that we express opinions which are prevalent in the industry. In April 1988, we presented a petition to the Solicitor General (Mrs. Smith) urging the withdrawal of the subject legislation, unfortunately to no avail.

In preparation for these hearings today, on Saturday we surveyed opinions of both shoppers and employees in the Scarborough Town Centre mall in order to obtain a frank opinion on the issue. The surveys, I believe, show an honest attempt not to influence the respondents, be they shopper or retail worker. The results speak for themselves.

The question: "Beginning next week, the provincial government's justice committee begins hearings on the Sunday shopping issue. Your opinion on the matter would be appreciated so that it can be accurately reflected at the hearings. You are invited to indicate your support or opposition to Sunday shopping in the appropriate space below."

The results: The number of shoppers responding was 2,171 people: in favour of Sunday shopping, 878 people; opposed to Sunday shopping, 1,292 people or 59.55 per cent.

A second survey taken on the same date among those busy serving the public in the smaller independent stores in the mall—Eaton's, Simpsons and Bay store employees were excluded—reflected an even stronger opinion.

The question: "In order to reflect your opinion you are invited to indicate how you feel on the issue. The employees, managers and proprietors in your store are invited to express their personal opinion on the issue."

The results: The number of stores surveyed was 97 and the number of respondents was 571: in favour of Sunday shopping, 32 or 5.6 per cent; opposed to Sunday shopping, 539 or 94.4 per cent.

It is interesting to note that in addition to the 571 workers in the small stores, employees in seven stores were denied the privilege or right to participate in the survey on the instructions of their management personnel. Also, three other managers were instructed that they could not participate in the survey and feared repercussions should this committee approve the legislation and Bill 113 be given royal assent. This aspect really does raise questions on the effectiveness or even the efficacy of Bill 114.

Little comment is required on the numbers reflected in both opinion

surveys. The counts, I believe, speak for themselves and will come as no surprise to the Premier (Mr. Peterson), the Solicitor General or anyone else interested in the issues under discussion.

We feel these survey results are well supported by the Gallup poll surveys which indicated that 57 per cent of Ontario residents opposed Sunday shopping in May 1988. This poll corroborated radio station CFRB's phone-vote poll indicating that 70 per cent of its respondent listeners were opposed to the municipal option aspect in April 1988. Even this poll showed an increase in the radio station's polling of its listeners in January which clearly indicated that some 63.4 per cent of its listeners were totally against Sunday shopping.

Retail employees would like to feel that this government is getting the drift of public opinion that quite obviously does not support its stand. So far, such expressed opinions have been ignored by both the Solicitor General and our Premier. In fact, Mrs. Smith last week dismissed us as being part of the so-called Coalition Against Open Sunday Shopping groups opposing her stand on the issue. Such an attitude does little, if anything, to build our confidence that even this committee will really consider the valid opinions of some 484,000 retail workers in the province.

Our Solicitor General, in a recent Global TV Focus Ontario interview, intimated that her proposed changes to the existing legislation were stimulated by pressure from the grocery chains and others complaining about supposed inequities in existing legislation.

However, before she attempts to appease these groups she should sincerely consider the opinions of retail employees and shoppers alike, no matter how large or small their constituency or whether their product is food or furs, before she precipitates her proposed changes on retail employees.

She really must consider that these enterprises swept into the market scene knowing full well exactly what the rules of the game were at that time. To change the rules now would be less than compatible with her government's proclaimed sensitivity to voters' wishes and is a matter of questionable ethics.

Naturally, the provincial government is going to have to struggle with the existing legislation as it stands. However, exercising the municipal option is, in the early words of Mrs. Smith, a "cowardly posture." Retail workers tend to agree with that stand.

Certainly there were obvious inequities in the Retail Business Holidays Act. The government appears to have confronted certain aspects of stores that, for reasons influenced by religious conviction, close on some day other than Sunday. But it has failed totally to find a reasonable definition of "a tourist area."

Surely, with its huge majority, there is enough input from the Liberal caucus at Queen's Park that an equitable definition could be identified. Mrs. Smith, in conversation with the media, has given the impression that retail employees should not complain about Sunday shopping because one in four Ontario workers already works on Sundays.

What she neglects to mention is that the general employment involving Sunday work, be it nurse, policeman, firefighter or some other worker, involves people who joined those professions knowing full well what was involved and what was expected of them.

Retail workers, however, entered their profession on the basis that they had the liberty to enjoy their Sundays in any way they chose, be it on the beach, in church or in some other personal pursuit. Retail workers have already shown that they are willing to serve the public over some 70 hours a week for most of the year, and even longer over the Christmas period. Sunday shopping, with its additional five or six hours, will add little or no improvement to the shoppers' lifestyle; however, to the 484,000 retail workers in the province, Sunday shopping will necessitate some considerable disruption.

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Notwithstanding the intended protections under Bill 114, retail employees feel exposed. When you consider how the existing Labour Relations Act allowed a terribly contentious year-long series of hearings, penalizing Eaton's workers in 1986 and 1987, retail workers today have little, if any, confidence in the proposed protections. Certainly none of the intended protections cover commission employees in the retail business.

Oh, we can refuse Sunday scheduling on the basis of reasonableness. However, if the British Columbia and Alberta experience prevails in Ontario, the reality of the situation will necessitate that we work Sundays in order to maintain a reasonable income. In these other two provinces, Saturdays and Sundays became the primary days for buying larger-ticket items.

Mr. Chairman, justice committee members and the media at large, the retail workers, managers and proprietors, a population of some 3,500 working in the Scarborough Town Centre, respectfully ask you to reconsider the merits of Bills 113 and 114.

We consider Bill 113 to offer us little hope that Sunday shopping will not become a reality, despite the Liberal MPPs' contentions to the contrary. We consider Bill 114 to be useless in its intended protections. We appeal to you to reverse the intentions of the pending legislation as it relates to both bills, return to the drawing board and redefine the legislation's direction. We will personally assist in any such project.

No, such a stance will not diminish the public's impression of this committee and its members. On the contrary, it will establish you as being sensitive to the opinions of nearly half a million voters.

Mr. Chairman: Thank you very much for your brief, Mr. Waring. We have about 21 minutes left. The first person on my list to ask questions is Mr. Kanter, then Mrs. Cunningham and Mr. Philip.

Mr. Kanter: I certainly appreciate, and I am sure my colleagues appreciate, the presentation of someone like yourself who is involved in the front lines as a retail worker. I do have several questions.

The first one regards the provincial framework: the fact that the government is amending some sections, but we are basically keeping the law that says that most stores in Ontario will remain closed on Sunday. However, rather than keeping it in its current form, which has a lot of flaws that have been referred to by most of the previous witnesses here today, we are strengthening the enforcement of that law.

We are strengthening the fines and the type of evidence that can be used. We are permitting stores to be closed down much more quickly rather than dragging out long court battles. I do not want to give any free advertising to

any furriers in the city who might be around or listening, but there have been certain abuses of the law.

Are you familiar with the efforts that we have made and the very substantial changes we have made in the law, to make it a more enforceable law?

Mr. Waring: Reasonably, but there are also concerns that the domino effect will in fact take place.

Mr. Kanter: I appreciate the concerns about the municipal option. I am about to get to those. But I just wanted to be sure that you were familiar with the provincial framework in regard to the law.

Mr. Waring: I have read the pamphlet on Bills 113 and 114.

Mr. Kanter: OK. I appreciate that.

Second, I do want to move to the municipal option area because I think this is a very important one that you have referred to that gives you some concern. With respect to the current law that has a tourist exemption where a municipal council can designate an area supposedly essential for tourism, are you aware of how that was used in Scarborough, the municipality that you work in—I do not know if you live there—to exempt one furniture store? I am not sure which one it was, but are you aware of the process by which the current law is used to establish a store that is open on Sundays?

Mr. Waring: I heard the example of the furniture store. I do not know the details.

Mr. Kanter: OK. Are you aware that under the current law employees of that store might well have no notice of that proposed change and, indeed, no protection from working, should they not wish to, once that store opens? Are you familiar with that situation, as far as the current law is concerned?

Mr. Waring: Yes, I am, but I really feel that the case of the one furniture store in Scarborough emphasizes the need for correcting what inequities there are in the existing legislation, but I do not believe that throwing it open to the municipalities to establish their own policies on Sunday shopping is going to resolve the situation. I believe it will compound the situation.

Mr. Kanter: I do not want to get into an argument with you. You sound like someone who is quite familiar with the legislation. It is not just the one store in Scarborough; there are about 100-odd tourist areas open in the province.

I think it is a joint venture, not something that we on this committee can do on our own but perhaps something that you can co-operate with us on. You have said you would like to assist us in making the process better for retail employees by giving you a bigger stake, a bigger voice in the decision when this decision is made. I guess my question to you would be, could you work out a process that would help retail employees?

I think it is fair to say that there are now and are likely going to continue to be some exemptions in Ontario, whether by class of store or by geographic area. Are you willing to assist us in working out a process by which retail employees can be more involved in the process?

As part of that, I would ask if you are familiar with the proposal the Ontario Convenience Stores Association made earlier today that suggested a process of notice and hearing and appeal to the Ontario Municipal Board before a Sunday shopping law is passed. Are you familiar with that proposal?

Mr. Waring: To be honest, I am not familiar. I heard it on television just before I came down here, but other than that, I am not familiar.

I just tried to point out in my presentation that retail workers, myself included, would be delighted to help in establishing a more reasonable and what we feel is a more equitable solution to the problem of Sunday shopping.

Mr. Kanter: I can appreciate the fact that you did not have a lot of notice of this particular proposal. We did not either; we just received it this afternoon. I would just suggest that perhaps the clerk could make a copy of this available to you and you might take a look at it as one possible route of increasing your involvement and participation in this entire process.

Mr. Waring: Most definitely. I would be glad to co-operate, but I would like you to recognize that I am just one individual. I am part of a small ad hoc committee—committee is probably an exaggeration—a group of retail workers in Scarborough Town Centre who feel that if we did not express our opinions before the legislation was passed, there would be no point in crying about it afterwards. That becomes crying over spilled milk.

Mr. Kanter: I appreciate your decision to do that and I think you, together with the employers, are the key people in this and have perhaps even more at stake than some of the municipal leaders or religious leaders or others who are going to come before us, so I really appreciate that.

Mr. Waring: I should also mention that in my particular case, my fight is not with my employer, but I do believe that the situation in Scarborough Town Centre is a classic example of how the domino theory goes into effect.

We have three major department stores in the mall, two of which, I believe, have advocated for Sunday shopping. They were open on Sunday, December 27, 1987, and in Christmas of 1986 attempted to open four or five weeks ahead of Christmas.

Fortunately, my employer resisted. They did not open in 1986. They said they would not open until the situation became legitimate. They did not open on December 27. They respected their employees' holiday plans, and I think they stood behind the employees' position.

We also recognize that if our employer does not protect its market share in our mall, then we, as employees, stand to lose, because after inventory, the biggest whack any retail chain has to cover is payroll. If they do not protect their market share, they do not protect our jobs.

By and large, you will find a general spirit of co-operation between employee and employer. It is not just the hourly rated workers who are going to be involved, it is going to be the section heads, it is going to be the managers, because I do not believe that people will stand for it when they go shopping and need a quick decision, a management decision, and have to wait for a couple of days or the day after to get it. I think they expect that to be resolved when they have the problem.

1630

Mr. Chairman: Mr. Waring, we are going to move on to Mrs. Cunningham.

Mrs. Cunningham: It is a pleasure to meet you. I admire your energy and your enthusiasm. The day I was sworn in as a member of parliament, April 13, you were down here presenting your petition.

Mr. Waring: Correct.

Mrs. Cunningham: I want you to know that the citizens of London North did speak during the by-election. They were very much against Sunday shopping and they spoke.

I find myself in a tremendous dilemma right now; that is, I am placed on a committee that is listening to the public. Hopefully, we will have some influence in persuading the government to withdraw this legislation, as you have stated. I find myself in a position where the Solicitor General has stated she is really not interested in anything but minor changes.

I am wondering if you can offer me any suggestions. You seem to have boundless energy and you seem to have the research on your side. Is there anything you would suggest I could do to persuade this government that indeed the voice of the public, in your instance, is not a myth?

Mr. Waring: I personally feel it is unfortunate that there is such an overwhelming majority in the existing government benches that they are not prepared to listen to what the public has to say on the issue and what the polls have to say on the issue. I am sure their own individual polls of the public probably support the contentions I have tried to raise today.

I really feel it would behove this government, under our chairman here and under this committee, to make some recommendations that perhaps this whole issue should not be devolved through the municipal option, that the inequities in the existing act be corrected as well as possible and that we go back to the drawing board. I say that respectfully.

Mrs. Cunningham: I think that is a positive recommendation and I am sure the chairman will be taking it under advisement. We will be trying to persuade him, in our deliberations.

Mr. Waring: On behalf of retail workers, I thank you.

Mrs. Cunningham: One of the main problems with the legislation, the heart of the thing, is the definition of "tourist area." That is what the Solicitor General stated was the largest problem. There are flaws in the legislation we can fix. We do not have to do all this municipality stuff. Would you be prepared to help us define "tourist area"?

Mr. Waring: One hundred per cent.

Mrs. Cunningham: Are you in favour of a common pause day?

Mr. Waring: Most definitely.

Mrs. Cunningham: And I can put an X beside municipal option? You are not in favour of that?

Mr. Waring: Definitely no on the municipal option. On the common pause day, I am in favour of that. The government has tried to establish certain religious or ethnic exemptions. I can understand how that would happen and I would not be opposed to that type of correction in the existing legislation.

Mrs. Cunningham: You must be very unhappy with statements such as "strengthening the law that supports a common pause day" in reference to Bill 113.

Mr. Waring: I am sorry, you will have to explain.

Mrs. Cunningham: Bill 113 has been described as a bill that strengthens the law which supports the common pause day. You must be very unhappy with that statement. I do not believe Bill 113 does in fact support a common pause day.

Mr. Waring: No, I did not get the impression it did.

Mrs. Cunningham: Thank you again. I admire your enthusiasm and your dedication.

Mr. Philip: It is a pleasure to have someone who is so familiar with the business and who has a number of years in the business.

A concern that has been brought to me by the management side of the retail industry is that it takes a certain amount of money—and being from the training business, I know that training costs money—to train good staff who are knowledgeable about the product. They have made the argument to me that the retail industry monetarily is no more competitive for employees than the manufacturing industry and that people will get out of the business and in fact transfer over to other types of businesses, that they will have a staff turnover with all the extra costs of training new staff, should this legislation go through. Do you feel that is a possibility?

Mr. Waring: I think it is a real possibility. There are people who have expressed to me, in the conversations we have had in the mall, that they just will not work. I am not saying they are Eaton's employees or Simpsons employees.

I think the rather trite suggestion that Sunday shopping might help alleviate unemployment in the province by giving young people the opportunity to work in the retail business is an overblown solution. If that was the solution, then I am sure this government would be glad to open all its government departments to Saturday and Sunday work and totally solve the unemployment problem in the province.

I think retailers who do have to hire extra people—and certainly they will have to hire extra people to work the Sunday shift—not only face an immediate increased payroll to the employees, but also have to pick up the company share of unemployment insurance, Canada pension plan, workers' compensation, whatever the premiums are in all those areas as well. I believe these costs are going to be reflected in the cost of a transaction. They have to be. Who is going to foot the bill in the long run? It is going to be the people of the province.

I believe that with the increased services required to accommodate Sunday shopping, people in other work areas, such as Toronto Transit

Commission drivers, firemen, policemen, nurses, who through their seniority have now elevated themselves beyond the point where they are required to do Sunday shifts—just take the TTC alone; they are going to have to bring back some of these people who have already passed into a more senior position and are no longer required to do the Sunday shift. I believe the cost of bringing those people back and the aggravation those people are now going to experience, which is seldom mentioned, are factors that should be taken into consideration.

Mr. Philip: It has been suggested to me by some retailers, particularly those who are in the hardware industry and the jewellery industry, that the idea of options for managers is simply unthinkable, because people who are going in to buy jewellery, people who are going in to buy sophisticated products need someone who has a fairly good knowledge. In fact, the municipal option in British Columbia has meant that managers, whether they like it or not, have to work on Sundays; there is no option.

Mr. Waring: I really do believe that is valid. I do not see how my employer could operate the Scarborough Town Centre store—and I am a department store employee—without bringing in section heads and managers so that customers' problems could be resolved instantly, as is traditional in the trade.

Mr. Philip: You mentioned the British Columbia situation, where you said that no legislation to protect the employees would work, and then you left it there. I am wondering whether you have more information on which you would like to elaborate.

Mr. Waring: I think that might be a misunderstanding of what I said.

Mr. Philip: Maybe I read it incorrectly.

Mr. Waring: What I wanted to say about the BC experience was that Saturdays and Sundays became the two biggest-ticket days. Under Bill 114, there is no protection whatsoever for me as a commission salesperson. If I do not work, I do not get paid; if I do not sell, I do not get paid.

It has been suggested, by Mr. Magder ahead of me, that perhaps employers should pay time and a half for Sunday work, etc. That might be all well and good. I believe that opens up a hornet's nest of problems for employers. Is the General Motors employee going to get paid time and a half if he normally works a Sunday and gets his regular hourly rate? I think that creates a real hornet's nest.

1640

Mr. Philip: He probably does, under their collective agreement.

Mr. Waring: I am using that as an example. Not all employees who work Sundays—that is part of their regular shift.

Mr. Philip: I think my colleague has a question.

Mr. Farnan: I have just a brief question on the paragraph at the bottom of page 4 and the top of page 5. It would appear to me, despite the well-argued case that you present, that this paragraph would indicate there is little confidence on your part—

Mr. Waring: I am sorry, did you say "competence" or "confidence"? Please bite your tongue, sir.

Mr. Farnan: I think there is tremendous competence, and it is a wonderful brief, let me tell you, but I think the word is very clearly little confidence on your part—

Mr. Waring: Yes.

Mr. Farnan: —that the government is listening and a feeling that this committee, with its majority of government members, may not reflect what it hears in the briefs presented to us but will simply plough ahead with the legislation basically, we have been told, with perhaps some little fine-tuning. But all of the things that are being said, particularly by the workers—

Mr. Chairman: Is there a question, Mr. Farnan?

Mr. Farnan: Yes, the question is, as I said, that there appears from this particular paragraph to be little confidence that your message will get through to the government and that, indeed, the government may have its head in the sand as far as the opinions of the people out there are concerned.

Mr. Waring: Mr. Farnan, let me give you an example of something that happened on Saturday. I could not tell you the exact number, but it was many, more than a dozen retail workers, who said: "What is the point? The government is going to ram it through anyway."

What you have elicited from that one paragraph, I would agree with you, is that there is very little confidence out there that the government, or this committee as a whole, will really listen to what the people are saying.

Interjections.

Mr. Chairman: I think your colleague actually, in fairness, did not take the full time.

Mrs. Marland: I did not think she had.

Mr. Chairman: I am going to give you a very brief question, Mrs. Marland.

Mrs. Marland: Thank you. When people ask you, "What is the point?" because the outcome of the hearing is predetermined by the number of people representing the government side of the House who sit on the committee, or it is predetermined because we know the thrust of the provincial Liberal government on this issue of Sunday working or Sunday shopping, whichever you wish to call it; when people say that to you, I am sure you are very strong in saying what you said to us this afternoon, which is that if you do not state your case, then you risk being in the position where the government would say: "Well, we had public hearings. We did not hear from anybody. I guess it was all right." That is the reason you are carrying on your crusade, is it?

Mr. Waring: I would not call it a crusade. Back in January a group of us bought an ad in a newspaper. I have no idea how many responses the Premier (Mr. Peterson) got from that ad. We put together a petition of one department store's workers over a two-day period and made the presentation the day Mrs. Cunningham was sworn into the Legislature.

Our feeling is that, and I am not sure whom I am quoting, "The ball game's not over till it's over," and our feeling was that we should make a presentation, that we should make a case. If we are not heard or if we are not listened to, then we have other recourses beyond that. There are 484,000 retail workers in the province. If there are three people in each of those families, that is 1.5 million people who will vote—

Mrs. Marland: That is encouraging.

Mr. Waring: —and, I believe, reap the benefits of the provincial government's proposed legislation. That is why we are fortunate enough to see Mrs. Cunningham here today.

Mrs. Marland: Thank you very much.

Mr. Chairman: Thank you very much, Mr. Waring. I should not do this, but when you sit here all afternoon, I just want to ask one question: Do they have flea markets in the Scarborough Town Centre?

Mr. Waring: No.

Mr. Chairman: No flea markets.

Mr. Waring: But recognize, sir, that flea markets are something else again. The people who go and work there are entrepreneurs. They are, in essence, a tourist attraction. Nobody forces their employees, because they are Mom and Pop and family get-togethers.

Mr. Chairman: I was not referring to that; I was referring to the crowds that seem to respond to that. But you have answered the question. I appreciate that.

Mr. Waring: OK, but it is at the flea markets that the media seem to do their interviews. The people who are there obviously want to shop on Sundays.

Mr. Chairman: Mr. Waring, we would like to thank you for coming forward, particularly as an individual and, as you say, an ad hoc group, to express your views and take time out of, I am sure, a busy schedule to do that. We appreciate that.

Mr. Waring: Thank you, Mr. Chairman. We ask you please to hear us.

Mr. Chairman: You can be sure that the committee has heard your brief and that these facts will be taken under advisement.

Mr. Waring: Thank you.

Mr. Chairman: Just before members go, first of all, I want to congratulate the committee. You are just a fantastic group in assisting your humble chairman in staying on time. We have done a great job, and I hope we can do that so that we can get the maximum number of citizens of this province before us before the end of the hearings. So I congratulate you and I thank you for your co-operation.

We have a couple of housekeeping items. Are we going to do them today?

Clerk of the Committee: It is up to you.

Mr. Chairman: If there is a difficulty, perhaps we could do them tomorrow just after we receive the morning delegations.

Mr. Philip: Can you tell us the nature of them?

Clerk of the Committee: One is the members—

Mr. Chairman: Yes, one is the question that we left of members appearing as witnesses.

Mr. Philip: Why do we not do that first thing tomorrow morning, then?

Mr. Chairman: All right; it is probably a good idea. What was the other one?

Clerk of the Committee: I have a request from an organization in Ottawa that I want to bring to the committee's attention. The other one is just to fill you in on what is going on with the agenda.

Mr. Chairman: Do you want to leave that?

Mr. Kanter: The problem is that if we leave it to tomorrow morning, we are so tightly scheduled with committee groups. I would almost rather do the housekeeping matters now when we are not—

Mr. Philip: Then let's deal with the scheduling now and leave the others over until tomorrow. Can we do that so that we at least know—

Mr. Chairman: We can do it right after the morning groups have been heard.

Mr. Kanter: OK; we do it after the groups have been heard. That is OK.

Mr. Chairman: The only thing it will impinge on is the question of the lunch break.

Mr. Kanter: Yes, that is fine.

Mr. Philip: I am just concerned that if Deborah needs to make some arrangements, then the scheduling matter should be dealt with now, and let's deal with the other first thing in the morning.

Clerk of the Committee: OK.

Mr. Kanter: I think we are going to deal with the other last thing in the morning, after we hear the groups.

Mr. Chairman: Well, either way—

Clerk of the Committee: In fact, I have made the arrangements on the basis of what the subcommittee decided last week, but just so the full committee is aware of what is going on, because it does happen on Monday: Monday morning—that is Monday, August 15—we will be meeting here at 10 a.m. to hear some private citizens in Toronto. The afternoon we will use to travel to Collingwood. Then we will be meeting that evening in Collingwood and the next morning in Collingwood as well. I will have a complete agenda for you tomorrow, as soon as all of the groups have been heard.

Mr. Philip: What is happening in terms of Cambridge and all of those areas where there seems to be more—

Clerk of the Committee: OK. You will recall that the committee discussed opening up the evening in Brantford to accommodate those people who are interested in appearing. You opened up six slots, and I have exactly six groups who want to appear.

Mr. Philip: So there is no plan to have hearings in Cambridge, then, to accommodate any of that extra traffic through that area?

Clerk of the Committee: That is up to the committee, but at this time the committee has not directed me to open up anything.

Mr. Chairman: OK?

Mr. Farnan: I have a request from the committee that we consider going to Cambridge in the evening if there are six slots. Certainly there is a tremendous interest in the community. I know it has been discussed by the member for London North (Mrs. Cunningham) and other members of the committee. I believe there has been a considerable response.

Clerk of the Committee: Mr. Farnan, just to make myself clear, the six spots that opened up in Brantford are people in Brantford who are filling them; they are not coming from—

Mr. Farnan: OK. I note that the request was made to come to Cambridge. Has that been decided against?

Clerk of the Committee: I think this committee made that decision when it met on June 21.

Mr. Philip: I think, though, that the point I was making in the subcommittee was that we do seem to have an unusually large number from Cambridge. Recognizing that some arrangements have been made and some advertisements have been made, is there any way of our fitting in some hearings in Cambridge and readjusting some of the others? That was something you were going to look into and report back on.

Clerk of the Committee: No. In fact, the subcommittee had asked simply that we extend the hearings in Brantford. Now, that week there is no more time, other than that evening, that the subcommittee wanted to open up in Brantford. The only other week when there is some time that the committee will meet is in the Ottawa, Kingston, Peterborough area.

Mr. Farnan: Could I just ask how many requests there are from Cambridge? It may be irrelevant if there are not that many requests. How many requests of delegations have there been from Cambridge?

Clerk of the Committee: OK. I am assuming you mean from the Waterloo—

Mr. Farnan: Waterloo, Kitchener-Waterloo, Cambridge.

Clerk of the Committee: OK. Everyone who has indicated he wants to appear has been booked in Brantford, from that area, and I have six who have been accommodated.

Mr. Farnan: In Brantford?

Clerk of the Committee: They have requested from that area and have been accommodated in Brantford.

Mr. Chairman: By extending the hearing, is that right?

Clerk of the Committee: No, they were accommodated earlier.

Mr. Farnan: OK, that is fine.

Mrs. Cunningham: So nobody is left out right now.

Clerk of the Committee: Not this time.

Mr. Chairman: OK, I think that is it. We stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 4:52 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, AUGUST 9, 1988

Morning Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Farnan, Michael (Cambridge NDP) for Mr. Hampton

Jackson, Cameron (Burlington South PC) for Mr. Cureatz

Pelissero, Harry E. (Lincoln L) for Ms. Poole

Roberts, Marietta L. D. (Elgin L) for Ms. Hart

Clerk: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Kanter, Ron, Parliamentary Assistant to the Solicitor General (St. Andrew-St. Patrick L)

Ritchie, John M., Senior Crown Counsel

From the Lumber and Building Materials Association of Ontario, Inc.:

Hancock, Hannah M., Executive Vice-President

Johns, Stephen, Member Services Manager

From the Archdiocese of Toronto:

Scorsone, Dr. Suzanne R., Director, Office of Catholic Family Life

Individual Presentation:

Danson, Timothy, Constitutional Lawyer; with Lobl, Recht, Freedman and Danson

From the Association of Municipalities of Ontario:

Brick, Doris, President

Hopcroft, Grant, Vice-President

Dunbar, Mac, Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, August 9, 1988

The committee met at 10:03 a.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act.

Mr. Chairman: The first delegation this morning is the Lumber and Building Materials Association of Ontario, Inc. It is Hannah Hancock?

Mrs. Hancock: Yes.

Mr. Chairman: I wonder if you might identify yourself for Hansard and also the gentleman sitting to your left.

LUMBER AND BUILDING MATERIALS ASSOCIATION
OF ONTARIO, INC.

Mrs. Hancock: My name is Hannah Hancock. I am the executive vice-president of the Lumber and Building Materials Association of Ontario. My assistant, Stephen Johns, is member services manager for the Lumber and Building Materials Association of Ontario.

Mr. Chairman: Just to reiterate what we were indicating yesterday, you have half an hour we have set aside. You can use any or all of that half hour for your presentation, but it would be desirable if you left half or more for questions from the members of the committee. Would you like to proceed?

Mrs. Hancock: My name is Hannah Hancock and I am appearing before this committee today in my capacity as executive vice-president of the Lumber and Building Materials Association of Ontario.

The LBMAO is a trade association representing some 900 building supply and home centres, including chains and independent retail firms which generate approximately \$4 billion in annual sales volume, and has approximately 235 associate members in Ontario. The latter category includes manufacturers, wholesalers, distributors and buying groups, among others. In short, the LBMAO is the largest and most diverse regional building supply association in Canada.

There is an overwhelming consensus of opinion among the retailer membership, 94.5 per cent as indicated by a recent poll, that Sunday retailing is not desired or warranted. Therefore, my mandate to appear before this committee in opposition to Bill 113 and Bill 114 is clear and unequivocal.

With respect to Sunday retailing, I am not sure that the Ontario government can boast of such a mandate. For many years, the LBMAO has opposed various initiatives aimed at facilitating expanded or open Sunday retailing. Never, however, has the association's opposition to a Sunday shopping policy

or legislative initiative been as concerted as it is now. The reason for this is clear; the legislation is inequitable, inappropriate, ill-conceived, discriminatory, unpopular and, in a word, wrong.

I shall now take a few moments to focus on a few of the reasons the subject legislation should not be passed in its present form.

The existing Retail Business Holidays Act is clearly not perfect. For instance, subsection 4(2) of the act, which empowers a municipality to designate a given geographical area as a tourist area, has precipitated protracted, high-profile legal challenges such as the celebrated Paul Magder case, as well as certain abuses of the law. It strikes me that by amending this section of the act via designating certain tourist-oriented establishments exempt from section 2, subject to compliance with all other applicable sections of the act, you would be clarifying the rules of the game and eliminating from municipal jurisdiction a responsibility that most municipalities would likely rather do without.

Perhaps an even simpler alternative would be to impose a fine structure that would be of such magnitude as to serve as an effective deterrent to would-be lawbreakers.

Whether these suggestions have merit or not, the point is that by unilaterally scrapping the very essence of the Retail Business Holidays Act, the provincial government will be giving the terms "panic" and "knee-jerk reaction" new meaning. Furthermore, retailers, consumers and individual municipalities are not asking for such drastic action. In fact, they are asking you to reconsider it now. If you do not believe me, ask the Coalition Against Open Sunday Shopping, the People for Sunday Association of Canada, the Association of Municipalities of Ontario, the residents of the provincial riding of London North and Mr. Gallup. The list is endless. While I do not purport to speak on their behalf, their opinions are nevertheless irrefutable matters of public record.

The LBMAO membership is very much concerned about the implications that most certainly will be bred by the local option system. First, it is clear that once one municipality chooses to permit Sunday retailing, retailers in adjacent municipalities, while not being enthusiastic about operating on Sunday, will nevertheless be concerned about losing market share and will pressure their municipal governments to permit Sunday retailing. At this point, the domino effect will be activated.

The second concern about the local option is that, given the policies, goals and objectives of individual municipalities vis-à-vis the zoning bylaws, official plans and the commercial tax base, as well as the encouragement from the provincial government to municipalities to exercise their independence, the result will be the establishment of differing Sunday retailing laws and, thus, transboundary conflicts between retailers and municipal governments.

The third concern about the local option relates to the labour issue. While the provincial government is promoting local government decision-making autonomy on the fate and form of Sunday retailing legislation, there is nothing to suggest that Bill 114 has amended provincial labour legislation so as to make it flexible enough to reflect and safeguard the diverse interests of the retailing industry in individual municipalities.

In fact, this observation was substantiated by John Duffy of the Ministry of Labour in a meeting that I, along with three other LBMAO representatives, attended at the office of Ron Kanter on February 25, 1988. Mr. Duffy indicated at that time that the Employment Standards Act must remain in the domain of the provincial government and serve and protect workers throughout the province in a fair, consistent and equitable manner. Bill 114 merely offers an unproven mechanism to a retail employee who refuses to work on Sundays and could suffer unpleasant consequences as a result.

In this connection, I am not merely attempting to indicate shortcomings inherent in the Employment Standards Amendment Act or the Retail Business Holidays Act. Rather, I am trying to illustrate in another fashion the fact that the Sunday retailing issue and its various subissues are matters of provincial jurisdiction and should be treated as such.

In fact, in a communication I recently received from the Solicitor General dated June 1988, Mrs. Smith admitted this in stating that "the new law is based in the belief that the province should keep standard store closing rules for all of Ontario."

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The bottom line is that the Peterson government is attempting to do the impossible by reconciling two inconsistent concepts, namely, all-encompassing provincial labour legislation and municipal decision-making autonomy on the form and substance of Sunday retailing within individual municipal boundaries.

Thus far, I have addressed the Sunday retailing matter from a predominately administrative and legislative perspective. The importance of analysing the subject in this vein pales, however, in comparison to an examination of the principles of logical, responsible and responsive government, quality of life and economics that the passage of Bill 113 and Bill 114 will clearly compromise. I will briefly touch upon each of these principles.

With regard to the first principle, what we are dealing with here is a situation in the form of the Retail Business Holidays Act that is in need of some fine-tuning so as to increase its power of persuasion, legal credibility and enforceability. There has yet, however, to emerge any sign of a ground swell of public support for changes as radical as those proposed—changes that will effectively result in a completely new legal framework within which the labour, commercial, economic and social issues surrounding Sunday retailing will be dealt.

As recently as a year ago, the all-party select committee of the Ontario Legislature, of which the Solicitor General was a member, while unanimously endorsing the concept of a common pause day, recommended that certain exemptions respecting education and recreation be extended. As well, it recognized the need to provide a greater degree of consistency in defining tourist areas and related activities. The committee took its position on the Sunday retailing issue after hearing and analysing, in consultation with the appropriate government officials, hundreds of public submissions from a wide cross-section of interest.

There was no public call at that time for the wholesale changes packaged in Bills 113 and 114. The change of direction that is the subject of the public hearings before your committee can, therefore, only be described as arbitrary and a slap in the faces of those who both served on and addressed the all-party committee.

Is this logical, responsible and responsive government? I think not. If I may address this principle further, Sunday retailing could force hundreds of private and public sector workers in service-oriented positions to work on Sundays. I am, of course, referring to the much-ballyhooed ripple effect argument which I suspect has attracted the attention of many worried Ontarians.

I say this because of the dramatic shift in Ontario public opinion regarding Sunday retailing. To illustrate this point, a November 1986 Gallup poll, which asked the question, "Should retail outlets be allowed to sell goods or services on Sunday?" revealed that 54 per cent of Ontarians supported Sunday shopping. An identical poll conducted by Gallup a year and a half later in April 1988 showed a marked shift in attitude, as 57 per cent of Ontarians polled at that time indicated their opposition to Sunday shopping.

The bottom line is that people fear having to work on a Sunday and resent the thought of having to pay more taxes to finance the necessary beef-ups in policing, public transportation, health care, day care, etc., in a time of what governments at all levels refer to as fiscal restraint. In a nutshell, political hypocrisy will never be well received by the voting population.

In the light of this significant change in public opinion, I again ask, "Does the effort to get Bills 113 and 114 passed constitute logical, responsible and responsive government?" I again say, "I think not." In fact, when considering these poll results, as well as the result of the London North by-election in which Sunday retailing was a principle issue, the effort being demonstrated by some in the cabinet and the Liberal caucus to get these bills through third reading makes absolutely no political sense.

With regard to the second principle I earlier alluded to, namely, quality of life, I shall not list the many arguments associated with this principle which the members of this committee have heard and will undoubtedly hear over and over again during the course of this public hearing process. Let it simply suffice to say that thousands of parents will be working on Sunday if the subject legislation is passed. Many of these parents will be single parents who will not only lose a valuable day with their children but will also have to find and pay for more day care.

Not only will parents and children suffer. Many others consider Sunday as their one opportunity during the week to relax and/or get together with friends and relatives. Sunday retailing will deny them this opportunity. For a government that prides itself on having a social conscience, Bill 113 should be scrapped on this basis alone. Furthermore, Bill 114 does not appear to offer enough employee protection to address this issue adequately.

The final principle I wish to speak to is the principle of basic economics. The prevailing opinion among a large majority of the Lumber and Building Materials Association of Ontario retailer members I have spoken to is that the seven-day retailing week would raise overhead costs significantly, particularly those costs associated with personnel, which typically represent 20 per cent or more of sales. If the subject legislation is passed in its present form, despite the provisions of Bill 114, many employers will try to replace some of their full-time staff with comparatively unskilled part-time staff as a means of mitigating costs. Many will also succeed.

These same retailers do not accept the premise that sales volume increases resulting from Sunday retailing will offset additional operating

costs. They believe any retail opportunists who now open on Sunday do experience some increase in volume because they have a competitive advantage. If, however, all retail stores were open on Sundays, such an advantage would be lost.

These views have been substantiated by the western Canada experience. A number of independent studies have suggested that the economic benefits of open Sunday retailing will be negligible and that most of them will be enjoyed by those groups with the greatest economic power, namely, large chain stores and governments. In areas of western Canada which have adopted the local option, sales increases of between one and five per cent seem to be the norm. These are, unfortunately, usually accompanied by even higher, on a percentage basis, operating costs. Many stores are responding to the latter phenomenon by raising product prices and reducing store hours or levels of service during the week. These responses are, of course, at the expense of consumer convenience.

The small retailer has indicated the most concern and resentment. Apart from the factors I have just mentioned, the Minister of Labour (Mr. Sorbara) has proposed that employers be required to pay premium wages to employees required to work on Sundays. Many retailer employers foresee this as the knockout punch.

I could go on at some length on this issue and discuss complications and violations that could be catalysed by the subject legislation vis-à-vis tenant leases and collective agreements among others. However, I would rather at this time simply implore this committee on behalf of the LBMAO retailer members to assess this submission as openly and objectively as I have attempted to present it. I would also ask that the committee recommend to the Premier (Mr. Peterson) that those cabinet ministers responsible for the various areas covered by the legislation be instructed to justify to the people of Ontario, particularly those engaged in retailing, the passage of the legislation on the basis of the economic and quality-of-life benefits to be accrued. Such justification has thus far been most conspicuous in its absence.

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Just before I finish, as an aside I would like to say there was an excerpt from a July 27, 1988, Globe and Mail article in which Premier David Peterson renders certain opinions respecting the free trade deal and the need for a federal election on that issue.

"Ontario Premier David Peterson says there should be a federal election on the free trade deal. 'I think it's important that people speak.... If the people of this country speak on an important issue, I have to accept the results of that, and I would as a democrat.'"

Certainly, these opinions must also apply to an issue of the significance of Sunday retailing in Ontario.

Finally, on behalf of the LBMAO, I thank you for affording myself and all other interested parties the opportunity to appear before the standing committee respecting this important issue.

Mr. Chairman: Thank you very much for your presentation. We have approximately 15 minutes left, which will be divided equally among the caucuses. My first questioner is Mr. Chiarelli, then Mr. Philip and Mrs. Cunningham.

Mr. Kanter: Just as a matter of procedure, is it not the usual fashion to start with the opposition, then the third party and then proceed to the government party?

Mr. Chairman: I do it on the basis of whose hand I see first and I saw Mr. Chiarelli's first, but I am prepared to be—

Mr. Jackson: That is the procedure.

Mr. Chairman: —guided by whatever the committee would like to do.

Mr. Philip: That is not the procedure the Conservatives used to argue before they fell to third place, but I have no objection to Mr. Chiarelli going ahead of me.

Mr. Jackson: Would you like us to go first?

Mr. Chiarelli: I have no objection to going first.

Mr. Chairman: What we are doing really is just eating into the time of the members by arguing the point. I can simply fictionally say I saw Mr. Jackson first, if he wishes to go first, or as I saw it, it was Mr. Chiarelli first. I am in the hands of the committee.

Mr. Chiarelli: It has been the custom that you have indicated roughly how much time we would have. Could you indicate that in this case, please?

Mr. Chairman: Five minutes. Probably less than that now, but I think we will leave it at five minutes.

Mrs. Cunningham: That comes out of your time because you raised it.

Mr. Kanter: A point of procedure for everyone's benefit.

Mr. Chiarelli: First of all, I want to thank Mrs. Hancock for her submission. I think it covered a lot of very relevant points and there are some very strongly held viewpoints in her brief.

I have several questions. The first question has to do with the nature of your association. I assume that it is a retail-based association.

Mrs. Hancock: The voting members are retailers, yes.

Mr. Chiarelli: I am just wondering how you would comment on the brief that was submitted yesterday by Alasdair McKichan of the Retail Council of Canada. In his oral submission and his written submission, he basically said that the Retail Council of Canada has no strong position on this issue and commented on several aspects of the proposed legislation, but in substance, he said that on behalf of the Retail Council of Canada there is no consensus on the issue of wide-open Sunday shopping or, in particular, this legislation. How would you relate your association, as a retailer, to the comments of Mr. McKichan of the Retail Council of Canada?

Mrs. Hancock: I believe Mr. McKichan represents a very wide and broad range of retailers, not in the lumber and building materials industry at all, which we consider to be different to a Mac's Milk store or a small clothing store, that type of thing. We consider our association represents

building supply dealers, who do not feel the public is interested in coming into a retail building supply store on Sunday, and they would definitely not get any advantage with Sunday retailing.

Mr. Chiarelli: Do you think it would be fair to say that across the board with retailers there is a substantial difference of opinion in many areas?

Mrs. Hancock: Our poll indicates that our membership, say 94.5 per cent, does not wish to open on Sunday. I cannot speak for the other industries.

Mr. Chiarelli: You mentioned the 94.5 per cent. Your written brief indicates "a recent poll that Sunday retailing is not desired or warranted." That is the 94.5 per cent. You also indicated a Gallup poll in April 1988, dealing with 57 per cent opposed to Sunday retailing.

Contrary to some common belief and understanding, the Liberal Party wants to have legislation that is workable and acceptable. It bothers me to a certain extent to see 57 per cent polled opposed to Sunday retailing or 94.5 per cent of your particular group opposed to Sunday retailing.

I would like something instructive from you that would assist us in terms of specifically what you think would be reasonable to remain open on Sunday. We are talking about service stations, convenience stores, pharmacies—of what size? Book stores, for example. What would you permit to be open within a provincial framework on Sundays? I particularly raise the issue that there are 100 municipalities now in Ontario that have used the present legislation to open in some fashion on Sunday. What would you suggest to the community at large would be reasonable to remain open on Sundays?

Mrs. Hancock: Our point is that we think the present legislation, with some fine-tuning, more stringent fines for people who open—

Mr. Chiarelli: Would you go to the 100 municipalities that have used the existing legislation and close existing businesses?

Mrs. Hancock: No.

Mr. Chiarelli: You would not close anything that existed at the present time.

Mr. Chairman: I think the answer was no. We are going to leave you now, Mr. Chiarelli.

Mrs. Hancock: That is right. I would say no.

Mr. Philip: I wonder if you can comment. Yesterday, Mr. McKichan, president of the Retail Council of Canada, which represents both The Bay, which is in favour of it, and other retailers, a majority of whom are against this legislation, commented that one of the things that business needs is some stability and, in fact, this legislation creates an instability and therefore makes planning and financing more difficult. We can see what future financing can do, as the grape growers in British Columbia are now finding out as a result of impending free trade legislation.

Do you feel that this legislation will create some instability in your market, and will this create difficulty for you in terms of long-range planning, financing and growth of your individual operations?

Mrs. Hancock: Definitely. That is one of the major concerns. I think one of the major concerns is that our people do not want the municipalities to have the full authority to say whether they open or not. They wish the Liberal government to look after that matter. They are also very concerned about operating costs and, as you say, future planning. They do not know whether they might, at some point, be open. They do not know whether they can count on not being open. They are concerned about the implications of the staff. They are very much concerned about staffing.

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Mr. Philip: You refer in your brief to the economic or increased costs. That is something that the grocery store operators are concerned about. They claim it will increase the cost of groceries from anywhere between five and 15 per cent.

One of the concerns we have here in Metropolitan Toronto is that for a simple town home in my riding to qualify for a mortgage, I am told by real estate agents, the buyer need an income of about \$41,500—to buy a simple town home with three bedrooms, nothing very fancy.

I am wondering what are the implications to the home construction industry of having wages paid over seven days to sell essentially the same amount of lumber and components of homes that you would sell over six days? Will this mean increased construction costs and, therefore, increased costs for housing in this city?

Mrs. Hancock: I cannot speak for the construction industry, but I can speak for the small contractors who build small tract homes and who use the building supply yards as their source of lumber. The answer is yes.

Mr. Jackson: And renovation?

Mrs. Hancock: And all the renovation trades, which would want to have retailers open and have that available. That will definitely increase the cost of a home. There is no question about that.

Mr. Chairman: I will come back to Mr. Farnan. We still have a little time. I am going to move on to Mrs. Cunningham first.

Mrs. Cunningham: Thank you for a very well prepared, inclusive, responsive brief. It is going to be most helpful in our deliberations, I can assure you. I would also like to thank you for the two references to London North. It was real. Whether people want to think it is a myth or not, I think it was a proven reality.

I am sitting here in frustration as a member of this committee, as I mentioned to some of the presenters yesterday, because I am not certain what kind of impact I can have and our party can have on this legislation, but we are going to try.

One of my approaches is to ask the same three questions of most groups. You have already answered a couple of them in that you are in favour of a common pause day and that you are not in favour of the municipal option.

I think you refer to your frustration on page 2. In your words, you say: "It strikes me that by amending this section of the act"—and I am now talking

about tourist areas—"via designating certain tourist-oriented establishments exempt from section 2, subject to compliance with all other applicable sections of the act, you would be clarifying the rules of the game and eliminating from municipal jurisdiction a responsibility that most municipalities would likely rather do without."

You have 100 per cent support on that observation by everyone who appeared before the committee yesterday. That is the true consensus of everyone, even though they could not speak to the pause day in some instances or to the municipal option in some instances. They agree with you on this one, and that is the definition of "tourist".

Have you ever been asked to assist in the definition of "tourist area"?

Mrs. Hancock: No.

Mrs. Cunningham: Would you be willing to if we could make that a priority of either this committee or another committee of government?

Mrs. Hancock: Yes.

Mrs. Cunningham: That would be as a response to the problem with this legislation?

Mrs. Hancock: Yes.

Mrs. Cunningham: We have unanimity on that one.

I would also like to look at page 6 of your brief and to make the observation, when you talk about this ripple effect, that the Solicitor General talked about five myths in her statement. You have addressed every one of these myths as a reality. I wondered if you would like to have the opportunity to respond to the use of the word "myth".

I think the greatest myth that she referred to was the ripple effect. She referred to others as well, all of which you have addressed as a reality.

Mrs. Hancock: We do not think these are myths. We think they are realities.

Mrs. Cunningham: I am sorry for asking that question. You probably have not had an opportunity to look at the statement.

Mrs. Hancock: No, I do not think I have.

Mrs. Cunningham: That is an unfair question. It just struck me when looking at your comprehensive brief, if you did not have an opportunity to look at the statement, I am so pleased that you did appear before the committee today with a well-researched paper that supports the real concerns of the public and that you would not refer to them as myths. I thank you very much for your presentation.

Mr. Farnan: On page 9 of the brief, you make a charge. It is very simple. It says, "Such justification has thus far been most conspicuous in its absence," and that is any effort on the part of the government to justify it in terms of economic and quality-of-life benefits. This was an opportunity for some member of the government to suggest to you that these issues have been

addressed in the past. I did not hear anybody from the government suggest that they had been addressed or question the validity of your statements, so I have to presume they have not been addressed. I thank you for bringing that point out.

Finally, it was an excellent presentation. This is more in the light of a statement. If the sound reasoning of your brief, the logical argument that you presented and the blueprint you have given for political integrity were to be applied by the government, it would withdraw these bills. I thank you again for your brief.

Mr. Chairman: Thank you very much on behalf of the committee. We appreciate your coming forward and presenting your brief. Certainly, along with other briefs, it will be considered by the committee.

Mrs. Hancock: Could I leave a copy of the directory of every lumber and building materials retailer with you, so you will know who they are?

Mr. Chairman: Certainly. If you will give that to the clerk, we will be happy to have it.

Mr. Farnan: On a point of procedure: I have just been on the committee for one day, but it would appear to me that it would be beneficial if our colleague the member for London North (Mrs. Cunningham) were to type out the three questions she is asking each delegation and have the response made. If it is the same question to every delegation, I think we can get more information and it will give more time for other questions. I believe what the member is doing is beneficial. I think the member is collecting very relevant information that is important to the case that she will present and opposition members will present.

Mrs. Cunningham: Before you make your ruling, Mr. Chairman, may I—

Mr. Chairman: I am not making any ruling at all, because I think it is a matter for the personal decision of the member. If she wishes to ask those questions on the record on each occasion, that is her prerogative. She can use her time in whatever way she wishes.

I appreciate your observations, Mr. Farnan.

We are going to move on to the Roman Catholic Archdiocese of Toronto, unless your point was different.

Mrs. Cunningham: No, that was my point, that each person has a right to ask any question he wants.

Mr. Chairman: We will move on to the next delegation, the Roman Catholic Archdiocese of Toronto, Suzanne Scorsone. Perhaps you would have a seat and identify yourself for purposes of Hansard.

To reiterate, because of the pressure of the number of people who wish to address us, we have limited your time to half an hour. You can use any or all of that time for your presentation, but it would be desirable if you would leave a significant portion for questions from members of the committee. Perhaps you would like to identify yourself and proceed.

ROMAN CATHOLIC ARCHDIOCESE OF TORONTO

Dr. Scorsone: I am Dr. Suzanne Scorsone. I am a social anthropologist by training and I direct the Office of Catholic Family Life for the archdiocese of Toronto. What I have to say to you, though, is very much the same position as you would have if you asked any bishop of Ontario from any diocese.

Also, just as an entirely paranthetical thing, may I suggest that this august body put a crossing light near the subway? If I had been a senior trying to get across to talk to you about pensions, I would never have made it.

1040

Mr. Chairman: We do not have authority over that, but I would concur with you, because I can remember the days I almost got killed crossing from Queen's Park Crescent to the University of Toronto.

Mr. Jackson: It is even more hazardous if they know you are a Liberal.

Mr. Philip: Historically, there were three MPPs knocked down there in the 1930s. All of them happened to have come from my party. I suspect that it was a Conservative Party plot, but we could never prove it.

Dr. Scorsone: Could we put together an all-party consensus, at least, on that? Anyway, to my presentation on Sunday closing.

The Archdiocese of Toronto comes before you on behalf of its own constituents, the Catholics between Penetanguishene, Oshawa, Mississauga and the shore of Lake Ontario. We are a bit over a third of the population there. Our position clearly represents the minds of all the bishops of Ontario. Those dioceses which have been able to get time at hearings in their areas will be addressing you as well. We do so in solidarity with other Christians and those of other faiths and still others who profess no formal faith. The present Sunday closing law is sound labour legislation, not the establishment of the observances of any religion, as the Supreme Court of Canada has made clear. For us, as Catholics, as to other Christians and members of the Jewish and Muslim communities, observance has always meant both religious worship and a common day of rest for workers. The one, in justice, requires the other.

In Deuteronomy 5, the Israelites, and all of us with them, are reminded of what it was to be slaves in Egypt. God "brought them forth with an outstretched arm." The peoples around the Israelites had no laws protecting their free workers or their slaves from a seven-day work week. The Israelites themselves had known what it was to lack protection, not only from seven days on the job but from an arbitrary 24-hour workday, appalling working conditions and coercive management which considered the lash a normal form of staff motivation. They knew what injustice was. So their law gave justice, a day of rest, not only to their own employers and workers but to sojourners—those who were not members of their group—and even to the animals, the oxen and the donkeys who worked along with the human beings.

The scriptural sabbath day injunction, laid down over 3,000 years ago, is therefore the earliest and the longest-enduring piece of progressive labour legislation in the history of the world.

Perhaps we have become so affluent and our consumption has become so compulsive that we have forgotten the hard fight our more recent ancestors of the past two centuries also had for just conditions of work. If we remember what they struggled for, which included a humane work week allowing time for their families, we will not lightly turn the clock back to a time when competition for dollars ruled the lives of both workers and employers.

There is a valid time for work, commerce and for profit, its benefits shared by employer and worker alike. There is, however, also a time for the personal life. Our work lives and our money are in the service of our personal lives and relationships and in the service of others. If that order is reversed and our personal lives are made the servants of commerce, then we revert to the condition of wage slaves, worker and employer alike, and money becomes our master. In a truly human society, as Pope John Paul II has said, man is the subject, not the object of labour. We make the economy, and it is in our service, not the other way round.

We in the Catholic community and others spanning the society of this great province hope that this Legislature will allow Bills 113 and 114 to die quietly. We recognize that they were introduced in an attempt to do what it was mistakenly thought a majority of the population wanted. It has become clear, however, that the great majority of the people of Ontario do not want open Sunday shopping, and to institute it would be to the great detriment of the family life of retail employers, retail workers and all those others in auxiliary services who would have to work on Sundays to support them. Nor would it be of real benefit even to consumers, whose families would be fragmented and whose costs would rise.

It is patently clear that municipal option, the key feature of Bill 113, would lead quickly to province-wide open Sunday shopping. Mobility is such in these high-tech days that market share is a regional, not a local, reality. Opening in one municipality would force other municipalities to open in self-defence. The associations of retailers and the unions that have addressed or will address you can give you the details of experience in other areas where open Sunday shopping exists. The evidence is compelling.

It is also clear that the apparent protections of Bill 114 for workers would constitute no protection in the real world of the marketplace. They do not even attempt to provide workers with the right to refuse to work on Sundays. The worker wishing to initiate a refusal to work on Sunday on the basis that it is unreasonable is faced with such a forest of limitations, qualifications and uncertainties to be adjudicated by the further opinion of some unknown referee that no worker in his or her right mind would try it. Such a process could take years, involving costly lawyers, time expended in hearings and the generation of a confrontational relationship with the employer. Many retail workers are without the support of a union, so a worker, even if he or she were to win, would be left with a potentially hostile, advancement-withholding employer, legal debts and exhaustion. If the case were lost, he or she would be left with all the same things, plus working Sundays anyway.

This litigious procedure, therefore, places the onus on the vulnerable, solitary, individual worker to carry the burden of his or her own protection. This protection should rather be provided by clear, predictable, explicit, consistent provincial legislation.

The employer too would be placed in a classic double bind by the passage of Bill 114. He or she would have to choose between placing pressure on some

employees, possibly single mothers with young children, to work on Sundays, or laying the burden of that work on others who may find the work no less objectionable. No employer wants to be obliged to undertake such a confrontational position with respect to employees. Not only would it offend the employers' humanitarian instincts, but the resultant hostility would also tend to lower productivity.

Bill 114 is an attempt to deal with some of the inequities arising from Bill 113. It would not, if passed, achieve its objective. Far better to withdraw both bills and allow the consistent provincial Sunday closing law to maintain fair competition between retailers without imposing an unnecessary source of conflict on both retailers and workers.

I would like to focus attention at this point on the discrimination against women which would be an inevitable, although perhaps unintentional, result of this legislation.

First, let us look at it from the perspective of the retail worker. The majority of retail workers are women, and of them the majority are nonunionized. A majority again are mothers and wives.

As we all know, school-age children are away from their parents at least from 9 to 3:30, Monday to Friday. A mother who is obliged to work Saturdays already misses one of the two days out of the week she might have with her children. If Sundays become retail days, she could be left with no days whatever with her children. If she objects, she probably has no union to support her. If she is already hired, she faces the withholding of advancement and pay increases. If she is not yet hired, she will not be.

No legislation can deal with the many subtle, informal means of discriminating against a woman who does not want to work Sundays. That the protest procedures mooted by Bill 114 would not be viewed with confidence, let alone undertaken, by any but the most recklessly courageous worker has already been shown.

Now let us look at the situation from the perspective of the retail entrepreneur. We know that women are the fastest-growing proportion of small business owners. They have a record of success, solid business practices and good employer-employee relations. Wide-open Sunday shopping places all this in jeopardy.

The small retailer, even more than the shift-rotating employee, will be supervising the business on Saturday. One of the only two possible days with her family is already gone. If she is obliged by the competition of other shops opening to open her business on Sunday, she has no days at all with her family.

To both woman retailer and woman retail worker, one or two days off during the week are of little use if children and/or husband are at school or work for the day. What are these days off giving her? The opportunity to stay home and clean the house alone? Or maybe to go shopping?

When life becomes this circular, it is no longer a life but a treadmill, and the person becomes no more than a part driving somebody else's machine.

Women have proven their capacity in the marketplace. They have, however, a deep love of and pride in their families. Most women with children would find a work schedule which eliminated their time with their families an

inhuman invasion of their private lives and ultimately unacceptable.

Passage of bills 113 and 114 would force a huge number of women to choose between their work and their families. This is an unfair burden for the government to place upon them when it is so manifestly avoidable. I mean, this is not wartime, after all.

Bills 113 and 114 would place an enormous obstacle in the way of women, who have already worked hard to make a place in the retail industry. It would be deeply ironic if, in this era of recognition of women's equality, the passage of this legislation were to deprive many women of the opportunity for advancement or of a climate in which they can build an enterprise.

Child care is another practical necessity for the working woman, whether retail worker or entrepreneur. We already know that the inadequacy of day care and aftercare available to the working mother on the usual five working days is a major obstacle to equality in the workplace. Women working in retailing already have to face the complete absence of organized child care on Saturdays.

Is the province, to free mothers to work, going to fund day care spaces for all the hundreds of thousands of children under the age of 10 who, by provincial law, must be supervised, on yet another day when the schools and all day care centres are shut tight as a drum? Or will the province expect the municipalities to fund care where local option and the domino pressure of other municipalities open the shops on Sunday? So far, I have heard no political promises on that score from anyone. The silence, one might say, is deafening.

Or is the woman working in retail rather, as is more likely, going to face the same heavy discrimination against her in the marketplace that she had to deal with before any of these things existed? Will she be obliged to scramble to find informal care and where a good situation is unavailable to her, to choose between leaving her children in dubious care and the truncation or loss of her career? What of the single mother who cannot tell her husband that it is his turn today? Or the married woman whose husband is already working Sundays in retailing either in his own business or as a employee? We must remember that these bills gave no woman the right to refuse to work on Sunday. Wide open Sunday shopping therefore would amount to even more severe discrimination against women in the work place.

1050

I could go on documenting the negative effects of the loss of a common pause day. I shall, however leave those details to the retailers and the individual employees and the unions which can speak of them from hard experience. It does seem that there is no need to put the people of this province through the process of finding all this out the hard way. The Supreme Court of Canada has already ruled that the existing law is constitutional and that the effect of a common pause day on families is highly desirable. Simply leaving the common pause day intact would be a straightforward solution to a non-problem. All retailers would have a fair shot at market share, women could compete in the marketplace with only the child care inadequacy of one day, Saturday, to deal with, not the gross inadequacy of two days.

The tourist industry would continue to boom because we have so much going for us as a province even without unlimited shopping. Effort could be put into ironing out the minor inconsistencies of exemptions for tourist-oriented areas and pharmacies in an equitable way.

What little religious discrimination there is in the existing law could be eliminated by a passage of the separate bill laying out in refined form the principle behind section 5(1) of Bill 113, which allows those stores which have been closed on another week day, for religious reasons, to be open on Sundays with no restrictions. That principle I wholeheartedly support.

Such an alteration in the law would allow members of the Jewish, Muslim,, Seventh Day Adventist and other religious communities who wish to hold their pause day on their holy day to do so without suffering any disability whatever. I urge the legislators of this great province, therefore, to allow Bills 113 and 114 to die quietly.

They are opposed by the majority, which in a democracy should be a clear message to a Legislative Assembly and the bills are of substantial help to no one that I have been able to identify. No one has yet collapsed of starvation on the steps of the provincial Legislature because he or she could not shop on Sundays. The basic necessities of life are available and other goods can arguably wait a few hours. For the families of retailers and retail workers and all who provide the services necessary to their work, however, predictable and adequate time with their families and friends is absolutely essential.

This province is committed to the support of families and their human relationships. The Ministry of Community and Social Services and the Ministry of Health make possible a huge number of support services helping healthy families to stay that way and helping dislocated families to deal constructively with their problems. Let us not pass two bills which would take away with one hand what the province has given with the other. As things are, so much more need exists than the province or perhaps any human institution has yet been able to deal with. Let us not place upon the families of Ontario an even greater form of external stress. Families, the basic building block of society have shown enormous resilience, but why make life harder? Things are tough enough.

Mr. Chairman: Thank you very much for the presentation of your brief. We have Mr. Philip first and we have roughly twenty-two minutes so that is seven minutes each.

Mr. Philip: Thank you, Dr. Scorsone, for a very eloquent presentation and a very thoughtful brief. One of the things that I know that the Catholic Church, the bishops have been concerned with, is the growing tendency in this so called rich and affluent society to feed large numbers of people by food banks. The retailers inform us that this legislation is likely to increase the cost of food by anywhere from 5 to 15 per cent. I wonder if, in preparing the brief, you have thought of whether or not this legislation will actually put increased pressures on the existing food bank system which, the Roman Catholic Church and other churches have deplored as a way of feeding people?

Dr. Scorsone: Well, I think it will certainly do that because it will cause prices to rise across the board which will squeeze poor families even more than it squeezes everybody else. As has been mentioned by the person giving the brief previous to mine, in all likelihood, there will be no larger number of dollars coming into the economy from opening on Sundays. What you will have is the same number of dollars kicking around in the marketplace, six days of profits with seven days of overhead. That is going to mean cost passed on the consumers on everything from food to lumber to whatever. That is going to mean increased costs for everyone, and that will squeeze the poor and then more of the poor will end up at the food bank lines necessarily.

Mr. Philip: May I ask you a personal question? After the last election, I believed the statement of the Premier (Mr. Peterson) that he believed in the common pause day and that he supported the recommendations of the select committee. When we were moving offices, I told my assistant to throw away my files, that it would not be an issue that we would be facing for at least another 10 years.

I am wondering, when you heard the promise by the Premier that he believed in the principle of a common pause day and in the recommendations of the select committee, which are directly contrary to that, did you believe him, and do you personally feel that he betrayed a trust with this legislation?

Dr. Scorsone: I do not want to get into making personal comments about anybody. Certainly I believed what was said at the time, and I am disappointed that things have changed. On the other hand, as I said in the brief, I think the initiation of this pair of bills was based on what it was thought people wanted because there were a few polls around saying that people did, in fact, want this. So I think it is altogether likely that the initiative was undertaken in good faith, but it has become clear that the people do not want this and that it would cause far too much dislocation of too many vulnerable people to put it through, and so now that we are faced with, in a democratic society, the reality that the majority of people do not want it, I do not see how it can be pushed through over the heads of the people.

Mr. Philip: Bishop Sheen used to say that the United States was changing to a society of anything for a buck. Is this anything-for-a-buck legislation?

Dr. Scorsone: Yes, I think that is ultimately what it is, but I also think it is not going to work. That is the irony of it. What it is going to do is lose people money, not gain them money, except possibly through the large retailing organizations, the large chains, because I believe the experience elsewhere has been that the small guy has had to close because of increased costs and the business has moved over to the large chains. I think most people are going to lose. Consumers will lose, small retailers will lose and workers will lose. Possibly a few large chains will gain, but I do not see gain happening for much of anybody here.

Mr. Jackson: I would like to ask a couple of questions. I very much appreciate your brief because it is the first one that has focused on the effects for single mothers in such great detail. We have had other briefs that have talked about the impact on the family.

You make a statement on page 6, talking about the intent of the legislation to free mothers to work. Statistics would indicate that there is enough work around there in the province now that we do not need really to free additional work time slots for women. However, the legislation does draw into question the concept of protecting the rights of certain families in transition, a family being a sole-support, mother-led family, which is the area where this legislation not only violates their opportunities but violates many of their rights.

You have indicated quite clearly and succinctly that there are implications for such families with respect to day care. You have also mentioned access to family. I can tell you that my partner only gets to spend one day a week with the family because she is a retail worker, and she will be resigning her 13-year career and all her seniority and all her benefits the

day this legislation is passed in our jurisdiction because the last and only day that we spend as a family will be lost to us. The only day I get to see my wife is on Sunday. I can tell you that I will take your brief and give it to her, and she will be pleased that someone has looked at that.

I do want to ask you more specifically, though, about your recommendations with respect to day care. It seems the government has conveyed a sense of commitment to women in this province which is rather shallow in the area of day care. Do you feel that we as a committee should be recommending that the province should provide some form of support for weekend day care as a result of this legislation? Alternatively, do you feel that this law should be structured in such a way that should a community or a municipality go on the municipal option, then they must provide a certain accessibility to a day care program, a certain ratio of day care access, within that region as a precondition of getting a local option approval? Would you comment on both of those?

1100

Mr. Chairman: Do you feel competent to answer that question?

Dr. Scorsone: I think I can take a shot at it. I would vastly prefer that the whole legislation not pass at all and that mothers be able simply to spend Sundays with their families and not have to look for care. If the thing were to pass at all, certainly the government would have to deal with that. I do not want to get into specific recommendations. I think that is something the municipalities and the government would have to look at together since obviously both are going to be involved in any kind of funding of day care.

There are over 1,250,000 children under the age of 10 in this province. By law, any child under the age of 10 who is left has to be supervised. If they are not, the burden is on the parent to show why that is not a problem, if a fire burns down the house or what have you. A very large proportion of those children are the children of retail workers. Potentially, if retail workers are 20 or 25 per cent of the population, you are looking at 250,000 or 300,000 children who would be in need of care. I do not see how feasibly any government is going to be able to cough up enough bucks to make a dent in that child care load.

Mr. Jackson: I guess the purpose of my question was to frame it as a deterrent to the bill. I do not support the bill in terms of its effect, but I am concerned primarily about its impact on women and the day care issue. We can amend the legislation. We could, for example, suggest that any mall, a significant retail operation, which everybody seems to say are going to be the great profiteers of this legislation— It is within our purview to say in the legislation that they must provide the Saturday and Sunday day care services where there exists in a collective more than 100 employees, for example. Even a large strip mall that had 150 employees would be required by law to provide a day care. If the consensus were 10 children, then they would need two adults. If it were 50 children, then they would need that many more. My intention in raising it is for the justice and fairness to women who will lose certain access rights in this province as a result of the legislation. Also, it is a deterrent.

Dr. Scorsone: Oh, yes.

Mr. Jackson: So I win on both fronts by suggesting, in a sense, that it becomes a deterrent. Some malls might say, "We don't want to get into the

day care business even though the government states we should be encouraging workplace day care." This would be a manner by which you are saying, "If you want the privilege of forcing your employees to work on a Sunday, then you provide the day care space."

Dr. Scorsone: If we really want to deter, then I would say the cost is going to have to hit the mall owner, the municipality and the provincial government, because all three are involved in the decision to open.

Mr. Jackson: You even now just answered the first question I asked you. Thank you very much.

Mr. Pelissero: Thank you, Dr. Scorsone, for your presentation today. It has certainly been well thought out, well put together and it has provoked a lot of thought in terms of a lot of different areas.

I would like to raise a couple of issues in terms of the current legislation and how you view it. On page 7 of your presentation, you talk about section 5 of Bill 113 in terms of the Sabbatarian exemption, and that is one aspect of Bill 113 that you like. Are there other aspects of Bill 113 that appeal to you, either the increased fines or the ability to close down stores a lot easier through court injunctions?

Dr. Scorsone: No, because increased fines can be reduced to a buck by a judge, and the ability to close down stores more easily presupposes that most of them are open. I would much prefer that what happens is that the whole thing not pass, and then some kind of committee be put together to tighten up the legislation to make the real problems that some people have with some of the inconsistencies in law dealt with in a more equitable and rational fashion.

Mr. Pelissero: In terms of the inconsistencies that you talk about in the current legislation, which operations would you close down?

Dr. Scorsone: I think that would have to be looked at much more specifically. I am making general statements of principle at this point. I think there would have to be a committee that would look into all of the relevant specifics. Obviously, for example, there have to be pharmacies open for people who need medicine. I have five children. There have been many times when I have needed a prescription, and needed it very badly for a child with an eye infection, or something like that, and I have had to get to a pharmacy, so obviously, there have to be pharmacies open. Anyone who is near to running out of gas on a Sunday knows that there has to be gas available somewhere.

At the same time, I can understand the feelings of some of the other retailers who say that you can buy anything from soup to nuts in a pharmacy these days, and this cuts into their market share. I can understand that they have a problem with that, but surely we can put some energy into finding an equitable way of dealing with that, rather than making the Italian lady open the store where I get my cold cuts at Yonge and Lawrence, which has nothing to do with tourism and nothing to do with anything.

I think one of the most eloquent statements that I have ever heard on this whole thing is this lady talking to me when she found out I was involved in the issue. She said: "I do not want to work. My husband does not want to work on Sunday. My teenage son and my teenage daughter do not want to work, but if this one opens and that one opens, what can I do? I lose business, so I am going to have to open." This is the way it is.

Mr. Farnan: The domino theory.

Dr. Scorsone: Exactly. There is no reason why people like her should have to open, so there must be some way of getting together and deciding what is a tourist area. She is not tourism. Why lay the burden of spending some time figuring out the difference between one kind of tourist area and another on her? Why lay it on people in areas that have nothing to do with tourism?

Mr. Pelissero: You could support a piece of legislation that would allow opening of things like pharmacies, some gas stations, the essential items.

Dr. Scorsone: Exactly.

Mr. Pelissero: I assume you would want some kind of an element of protection for those individuals who are working in those pharmacies and gas stations.

Dr. Scorsone: Absolutely.

Mr. Pelissero: In terms of the tourist designation—individuals keep referring to it—we have shopping malls now that I would consider as much a tourist attraction as it is a commercial retail operations, with respect to rides inside some of them, petting zoos in some of them, that attract individuals—from Monday to Saturday, I am saying. Let us just leave Sunday out of the issue for the time being. That obviously contributes to somebody's overhead costs, and you would not see that should be addressed?

Dr. Scorsone: I would not consider those to be genuine tourist areas. I would consider that to be an advertising come-on for a retail business. A genuine tourist area would be perhaps something like Harbourfront, or perhaps something like—

Mr. Pelissero: The Eaton Centre.

Dr. Scorsone: Well, the Eaton Centre, you have a problem. That is entirely a retail area.

Mr. Pelissero: And Harbourfront is not?

Dr. Scorsone: Harbourfront has at least some notion of entertainment. Ontario Place is maybe a better example. The Toronto zoo is a tourist area. I do not think any mall that throws a merry-go-round in its central lobby is a tourist area, although arguably, tourists show up there periodically, but I do not think if you say, "Good grief, I see a tourist. This is a tourist area." I do not think this is an argument for designation. There are obviously some areas that really are tourist areas, and I personally do not think the Eaton Centre is one of them. I think it is a commercial area to which tourists come, but its entire draw is commercial.

1110

Mr. Pelissero: The last point I would like to identify—

Mr. Chairman: You've got it.

Mr. Pelissero: I've got it, the last point then. It will not form a question. It will be more of a statement. In your opening address to the

committee, you said you wanted to talk about Sunday closing. I think you are the first person who has done that. I want to thank you for that, because this is what the legislation is attempting to do. It is to provide a framework by which Ontario will be closed. Thank you.

Dr. Scorsone: My problem is the legislation will not do it. If it would do it, I would be happy, but it will not.

Mr. Pelissero: I would put forward that in fact, it does. Thank you.

Mr. Chairman: I want to thank you on behalf of the committee for coming forward. It was lively and provocative. With five children and your occupation, you are to be commended for giving us the time you did. Thank you.

Dr. Scorsone: Thank you.

Mr. Chairman: The next presenter we have is Timothy Danson. He is recorded as a constitutional lawyer. Mr. Danson, would you have a seat and identify yourself for purposes of Hansard. I reiterate that 30 minutes is allowed for presentation.

I understand you had a very voluminous brief that we are in the course of trying to reproduce. It will not be available for your presentation, but I did not anticipate that you would be reading from that brief. You would have to be a very fast reader.

We would appreciate it if you left some time for members of the committee to ask questions, as well. Would you like to proceed?

TIMOTHY DANSON

Mr. Danson: By way of introducing myself, I am a constitutional lawyer, and I have argued the Sunday shopping case before all the courts of Ontario, including the Supreme Court of Canada.

On behalf of four of my clients, I am presently before the Ontario Court of Appeal, which will determine the constitutional validity of the Retail Business Holidays Act some time in the fall in the context of section 15 of the Charter of Rights and Freedoms, which was not considered by the Supreme Court of Canada.

The brief that is being prepared and which will be given to you is in response to a specific request. I understand a subcommittee of this committee invited me to address some comments to the experience of Sunday shopping in Massachusetts, the United States and Sweden. I have done that. I hope it does not impede too much into my time, but I will address those in the course of my submissions.

The brief that you will be getting looks like this. It has 12 tabs. It will give you a firm statistical and factual foundation of the experience of Sunday shopping in other jurisdictions. I think this committee will be faced with a lot of speculation and conjecture, and I hope that this brief will at least give you an opportunity to examine the experience of Sunday shopping in other jurisdictions. Tabs 2 to 12 deal with Massachusetts, Sweden and, generally, the United States. Tab 1 is the Goldfarb study, which is a 76-page study.

The reason that is there, as you will hear in the course of my

submissions, is that, I think it is at tab 3, you will see the Becker Institute poll, which is an equivalent in Massachusetts. When you compare the questions and answers and the percentages given in Massachusetts and in Ontario you will see that they are different. I hope that at the end of my submissions you do not simply dismiss what is happening in other jurisdictions by saying: "The United States is different from Canada. Canada is different from the United States."

I suggest that when you look at the data I have put in this brief, you will see that, while there are many differences between Canadians and Americans on this particular point, we are not different. I will direct my comments to that experience, but first, I would like to address some general issues.

From what I read in press reports, the Solicitor General (Mrs. Smith) spoke of myths which opponents of Sunday shopping rely upon. With respect, it is my submission that the Solicitor General is correct. Opponents to Sunday shopping cannot rely on experience in other jurisdictions, because the facts that emanate from those experiences simply dispel the myths that they use in opposition to Sunday shopping.

There are three fundamental myths and they are not indigenous to Ontario. It has happened wherever the issue of Sunday shopping has been discussed. The first is that Sunday shopping will destroy the family; second, that Sunday shopping will result in the exploitation of workers; and third, that generally, Sunday shopping will cause a decay in our social and community values as a whole.

Here are four basic reasons. I do not know the reasons Joan Smith gave or if those are the myths she addressed, because I am only going on the reports in the newspapers that she discussed the issue of myths. I would submit those are primary myths that opponents use all the time.

First, according to the most comprehensive study, and that is the Goldfarb study which is at tab 1 of my brief. This is distinct from a single-question poll. All of you here are very familiar with how polls can be used. In this, I have given you the actual questionnaire as well, so if one wants to say, "It depends on how you ask the questions," the questions are there. You can look at the questions yourself; you will see they are balanced questions. There is a prodigious difference between a single question and what the Goldfarb study is, and that is a full examination of the attitudinal structure of the people of Ontario. It is there in the brief and I hope you look at it.

According to that study, 91 per cent of Ontario residents do not believe Sunday shopping will have a negative impact on family life and 91 per cent of churchgoers in Ontario do not believe Sunday shopping will affect their attendance at church. That is number one.

Second, currently in Ontario, there are 316,584 union workers eligible for Sunday work under 101 different collective bargaining agreements today; this is in Ontario right now. There are 170,000 nonunion workers under the One Day's Rest in Seven Act who are eligible for Sunday work right now in Ontario. In addition, there are the thousands of workers who come within the myriad of exemptions and exceptions contained within the Retail Business Holidays Act, and finally there are the thousands upon thousands of workers who are not even covered by the act.

To say that it is OK for these thousands of people to work but deny the same right to other Ontarians is, with respect, intellectually offensive and is also contrary, in my submission, to the equality rights provisions of the charter. That will be an issue the Court of Appeal will be facing in the fall of this year.

If opponents to Sunday shopping are right, then as the expression goes, you can't suck and blow. You either close everybody down but for—I concede—essential services or you do not.

Now if you try to close down these 316,000 union workers who are eligible for work and you close down the 170,000 people who come under the One Day's Rest in Seven Act, I suggest to you that if you attempt to do that, you are going to ignite an opposition you will wish you had not. You cannot close them down, and so when you ask about the common pause day, I suppose the context of a common pause day has to be, "Yes, we believe in a common pause day, and to prove it we are going to close down everybody, including the union shops and all the others." That is the second point.

The third point is that if you think you can achieve perfection, you cannot. I think you know, as legislators, that it is almost impossible to get unanimity on emotional issues.

There are going to be good employers and there are bad employers. If an employer is prepared, as a principle, to exploit his workers, he is going to be doing it Monday through Saturday and it is not going to change on Sunday.

The retail industry is a service industry, and if the workers are being exploited, they are going to be unhappy. If you have unhappy workers, you are going to have unhappy employers and they are not going to make sales to their people; it is inconsistent with the very nature of retail. If employers are going to be successful, they have to have happy employees who are going to deal with customers.

Fourth, if you think the opposition to Sunday shopping is strong today, I suggest to you that if you do your homework and look back to what was happening in this province when Sunday sports and Sunday entertainment was being brought into this province, you will see that the opposition then was greater than the opposition to this legislation is today. I think it was President Truman who once said that the only thing new in the world is the history you do not know. Perhaps if you look to the history, you will see that the arguments of the opponents to Sunday sports and entertainment were the identical arguments being used today.

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Those people were wrong then and I suggest the same arguments are wrong today. I do not know how this committee can reconcile the fact that the arguments used against Sunday sports and Sunday entertainment were wrong then, but now, all of a sudden, they are right today, because if they are right today, then you have to concede that to be consistent we now have to eliminate Sunday sports and Sunday entertainment.

The next issue I want to address is why opponents perhaps speak louder on this issue than supporters. I suppose this is where one gets into the cliché about the silent majority. Over the years, I have represented some 300 retailers. Obviously, I have been very much involved in this argument, and have been since 1982 when I advanced the constitutional argument on behalf of

Paul Magder and others. The fact of the matter is that the majority of Ontario residents favour Sunday shopping not because of some deep emotional or philosophical commitment; the majority of Ontario residents support Sunday shopping because it is a convenience.

This is a loose group of people, of regular Ontarians. They are not a homogeneous group. Opponents to Sunday shopping in the union movement and the religious organizations are a homogeneous group and their opposition is deeply emotional. There is no question that their opposition is genuine. However, that is why you will probably have more people appearing before you stating an anti-Sunday shopping position than the average person in the street who does not really have the opportunity to appear before a committee such as this.

The fact of the matter is, and you will see this in the Goldfarb study, three quarters of Ontario residents do not support the status quo. That is a reality that obviously the government has recognized. Seventy-three per cent of Ontario residents would support Sunday shopping if labour protection legislation were introduced, and that is what the government has done. Almost 50 per cent of Ontarians who were opposed to Sunday shopping said they would support it if the majority would support it. Generally, 68 per cent of Metro residents support Sunday shopping while 61 per cent of all Ontario residents support Sunday shopping.

When you take the Gallup poll of 1988 that shows a shift, and then ask people why there is a shift, they will tell you, "The shift is because we now have all this opposition and we are afraid that workers may be exploited." If you then say to them, "If you were satisfied that really is not true and you could bring in effective labour legislation," then they shoot back up to 73 per cent in support of Sunday shopping.

Mr. Philip: You will find out this bill in fact does not do that. Then maybe it will go down.

Mr. Chairman: Mr. Philip, I may have to take that from your time, if you interject.

Mr. Danson: the main thing I want to talk about is Massachusetts and Sweden. I would like to address quickly a Sabbatarian exemption. The present legislation is entirely inadequate as it relates to the Sabbatarian exemption. One of my clients is Sunnybrook Foods Ltd., a Jewish merchant who closes at sunset Friday, closes all Saturday and opens on Sunday, but is charged on Sunday because he has more than 5,000 square feet. In that trial, numerous religious leaders were called, particularly from the Jewish community, the Seventh Day Adventists and the Sikh community. The present legislation is insensitive and in fact is insulting to the rich tradition of making multiculturalism a reality in this province.

I think the Peterson government's recognition of this reality is a very important one. The government's attempt at not only recognizing it, but also attempting to bring in legislation which will achieve the multicultural spirit in this province is one that deserves enormous applause. Regardless of your views on Sunday shopping, regardless of your views on the government's proposed amendments, I urge this committee to be unanimous in its support for a full and unrestricted Sabbatarian exemption. It is in this regard that the government's attempt to deal with this problem is one that ought to be applauded, because I believe the government's attempt is an honest and genuine one to attempt to correct a terrible wrong.

If you do not support the government at least conceptually in its attempt to create a fair and adequate Sabbatarian exemption, if you do not support the government, particularly those in the Conservative and New Democratic parties, I submit you will be playing into the hands of opponents to Sunday shopping who are not committed to multiculturalism, who believe the charter reads well as long as you do not take it too seriously.

Three, and most important, you are really reminding Ontarians that this is a Christian society and that the rest of us exercise our rights with leave of the majority.

Notwithstanding that I emphasize as strongly as I can that the government should be applauded in its attempt, I am afraid it needs to have some fine-tuning, because as a constitutional lawyer—maybe I should say this is good because that is what I make my living at—I am not so sure it is constitutional. I think it is a step in the right direction. There is no question that what the government is doing is good. But by designating in bylaws and so forth your religious background, I am afraid that is the issue on which we were successful in the Court of Appeal and what was reversed by the Supreme Court of Canada.

I am not going to give you a full legal opinion as to the constitutional validity of that because time does not permit. I do leave you with this, that what the government is doing ought to be applauded, but it just needs a little bit of refinement and I assume that is what this committee is all about. I would be happy on some subsequent occasion to prepare a legal submission to you as to where that could be corrected.

I would now like to turn to the American experience and I want you to know that in my brief I have the Massachusetts law, word for word, so you can look at it. You will see what they have done. One of the striking things you will see about the American legislation is that when it comes to labour protection, it is not nearly as strong as what is being proposed by the Liberal government. It works successfully in Massachusetts and other places, as well as in Sweden which I will deal with.

Another aspect about Massachusetts is that we are not the same as Americans. The New England states are not exactly backward civilizations. Massachusetts and Boston are the home of Harvard and the Massachusetts Institute of Technology. I suggest there are a lot of things we have in common with the people of Massachusetts. I think that of any state in the United States, the relationship between Massachusetts and Ontario is tremendous.

For example, you talk about the religious issue in the United States on the issue of Sunday shopping. North Carolina and South Carolina, as you know, are in the Bible belt of the United States of America. Residents in those states are deeply committed to their Christian religious beliefs, yet both states have wide-open Sunday shopping. If you dared attempt to repeal the Sunday shopping laws in North Carolina and South Carolina, you would have an enormous backlash and no one has attempted to do so. That is a good example.

Now if you compare the Goldfarb study, as I said, to the Becker poll, which is in there, you will see that the same attitudinal structures exist in Ontario as they do in Massachusetts. Opposition to Sunday shopping in Massachusetts was strong, but eventually supporters won the day. Like opposition to Sunday sports and entertainment, reality proved opponents wrong.

The argument that Sunday shopping would result in seven days' worth of

expenses over six days' worth of purchases is false, as the previous witness was indicating. The experience in Massachusetts proves that false. Time will not allow, but in my brief I have given you the statistics from the government, and you will see that is false. The Massachusetts experience shows Sunday shopping is a family activity. Again, if you compare the Becker poll to the Goldfarb poll, you will see the percentages for reasons for and against are basically proportional between Massachusetts and Ontario.

For years, unions were opposed to Sunday shopping in Massachusetts and indeed throughout the United States. Presently, and it is in my materials too, of the 50 states, 42 states have Sunday shopping and the other eight effectively have Sunday shopping because they have about 50 or 60 exemptions in their legislation. The unions in the United States raised three points, consistently.

They were opposed to Sunday shopping because workers would be forced to work on Sunday. They said, though, if you were going to have Sunday shopping, workers would have to be given a guarantee of receiving time-and-a-half wages. The unions also said they did not want any form of subtle discrimination. They were concerned someone might be coerced into working on Sunday or find out he was passed over on a promotion and so forth. I think it is fair to say that outside of the time and a half, that is the position the unions are raising here, and indeed opponents to this legislation have raised that

There is no inconsistency between what the American position was and the Canadian position was from a union point of view.

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These points were addressed by the American legislators and they ended up dealing with it. They passed their Sunday shopping legislation and the unions accepted that if these three points were addressed you would not have a negative impact on family life. The government officials and representatives of the business community agreed with the union demands and that left, really, the church groups of the United States as the primary opposition.

Mr. Chairman: I do not want to interrupt you, but I indicate to you that there are 12 minutes left, which would leave four minutes for questions by members. As I indicated at the outset, you can take the entire 30 minutes, if you wish, for your presentation.

Mr. Danson: I can only say that I received the invitation from this committee to research these points and I would probably not otherwise have done it.

Mr. Jackson: I would like to hear him.

Mr. Chairman: If that is the wish of the committee, that is fine.

Mr. Philip: Provided that we have some opportunity to question him because I think some of his statements are unscientific and certainly will not stand up to questioning.

Mr. Chairman: That would have to be a decision of the committee because we have been proceeding, out of fairness to all presenters, on a 30-minutes basis.

Mr. Jackson: You have the option to invite him back, but I would like to have—

Mr. Chairman: All right.

Mr. Danson: I might indicate that when the committee made a specific request of me to address this point, I took that request seriously. I did not want to come and spend five minutes and have you say: "Thank you, Mr. Danson. We asked you to address this point and you gave it five minutes."

Mr. Philip: The committee made a specific request to you and we appreciate that you are here. We requested it because a member of the committee, namely, the Liberal representative on the steering committee, suggested that you were a witness who would be of interest to the committee. It has always been our policy to invite anyone any member feels will be of use to the committee. It was not necessarily that all of us on the subcommittee thought we would endorse the point of view you were going to bring forward.

Mr. Chairman: As a matter of fairness, the subcommittee had the power to decide and did, so I guess in that respect Mr. Danson is here at the request of the entire committee. Would you proceed, Mr. Danson.

Mr. Danson: Briefly then, the Massachusetts law does the following: no worker can be forced to work on Sunday and all Sunday work had to be voluntary; there would be no discrimination and if an employee did not want to work on Sunday and so refused to work, that refusal could not be grounds for discrimination, dismissal, change or reduction in hours or any other penalty, and this would be enforced by the Department of Labor and Industries in Massachusetts; all Sunday work would be paid at a rate of time and a half, and the exemption to that is stores under seven employees, and landlords are not permitted to force retailers to be open.

That is the law they have and that law has worked effectively. If I may be perhaps a little presumptuous, perhaps you could invite as a witness at these hearings James Sullivan of the Boston Chamber of Commerce. His testimony—he was called as an expert witness in the proceedings—discusses in considerable detail the American experience and he can perhaps be helpful in that regard.

The predictions in Massachusetts, before the Sunday shopping legislation, were that Sunday shopping would result in approximately \$24 million in new payroll and \$6.5 million in new sales tax revenues from Sunday shopping alone. These predictions ended up being conservative. Now that they have had Sunday shopping in Massachusetts for some five years, the statistics show that in fact Sunday shopping increased payrolls in Massachusetts by \$80 million. Sales tax revenues increased \$11 million and it created 6,000 new jobs.

There were enough people who wanted to work on Sunday that the whole system worked nicely. Stores in Massachusetts are open from 12 noon to 6 p.m. Sunday shopping could not work without the strong indigenous support of the people of Massachusetts and it has been quite successful.

The Massachusetts experience also showed that Sunday sales were profitable because the stores are open only five or six hours; there is a much higher rate of sales per hour. Significantly more tourist dollars were expended. Most of the customers were man and wife, whose only opportunity to

shop together is on Sunday due to the current trend in Massachusetts in which approximately two thirds of married women are now employed.

Once these figures came out, once people said, "Gee, these myths did not become a reality," and we found that in Massachusetts it was the same as the other states in the United States, that Sunday shopping is an economic generator, then they went to determine why. These are facts I think this committee has to deal with. When you look at the statistics you are going to have a difficult time to dispel them.

I had an opportunity to discuss this at some length with a close personal friend of our family, a man who will likely be the next President of the United States and is presently the Governor of Massachusetts. Michael Dukakis was a person who was very concerned about Sunday shopping before it was introduced into his state. He was not the Governor at the time. But if you were to talk to Michael Dukakis today about the success of Sunday shopping and whether his fears ever materialized, he would tell you that they did not and that you could not conceive of repealing the Sunday shopping opening law in Massachusetts without a serious backlash.

Quickly, I will deal with Sweden. The fears and concerns—that material is also in my materials—over Sunday shopping in Sweden, you will see from the materials, were identical to the fears that are raised in Ontario. Sweden brought in Sunday shopping in 1967 with certain controls. By 1972, the controls were removed. Stores are permitted to be open in Sweden from 8 a.m. to 8 p.m. They found the exemptions and the exceptions unworkable, including tourist designations.

In 1978, there was an attempt by the Social Democrats to reintroduce controls, but the Liberal government of the day rejected them. In 1982, the Social Democrats came to power and the shopworkers' union asked the government to bring in controls. The government responded by setting up an inquiry in 1983. The findings of the inquiry were released in January 1984 and the Labour government of Sweden chose not to reintroduce the restrictions.

Having had 10 years of experience to reflect upon, the pro-labour government found as follows: (1) that fears of workers being exploited and families destroyed did not materialize; (2) that the number of households where both household heads were working increased significantly and that the laws had to accommodate changed shopping habits, and (3) that Sunday shopping clearly created more jobs and economic activity.

Interestingly, between 1972 and 1977, the proportion of department stores open on Sunday declined, responding to normal market conditions, and then after that, that trend has reversed rather rapidly. Sunday has become the number one trading day in Stockholm for furniture items and nonfood goods.

The co-op, KF, Sweden's largest retailer, was a strong opponent of Sunday shopping in Sweden. However, after years of practical experience, it reversed its position formally in 1982. In particular, the fears over finding people who wanted to work voluntarily did not materialize. That was critical to their reasons for changing their position.

The same thing happened with the Swedish Retail Federation, where 85 per cent of its members employ five people or less. Their fears never materialized. They are open supporters of Sunday shopping, having had the benefit of 10 years of practical experience; it is now 12 years.

The Swedish Food Retailers' Association also opposed Sunday shopping because it would lead to "opening hours day and night, creating chaotic competition and leading to a dramatic close-down of a number of retailers." However, again, since they have had the experience of some 12 years in Sweden, they have now reversed their position and say that the experience in Sweden of Sunday shopping has produced the exact opposite result.

The government also found that one of the real reasons unions opposed Sunday shopping in Sweden was because it increased the number of part-time workers who generally do not belong to unions and would make it more difficult to unionize.

The Swedish finance department found that prices were not affected by Sunday shopping and a return to six-day shopping would clearly reduce the volume of trade. Prices in shops open on Sundays in Sweden tended to be somewhat below the prices in stores that were not open on Sundays.

Finally, in March 1983, the Swedish Institute for Opinion Polls found that: (1) working parents and young families with children make the greatest use of Sunday shopping, and (2) about 30 per cent of all households shop regularly on Sundays and another 30 per cent sometimes.

I think those are my sped-up submissions with respect to those experiences. I have given you the data for it. I hope you simply do not dismiss it by saying: "That is Sweden and that is the United States. We are Canada and we are different." All the arguments that seem to say Sunday shopping is going to destroy families and workers and so on simply have not materialized.

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I close on this point: in September the government of Massachusetts is introducing new legislation because it has decided it wants to create more holidays in its legislation, holidays that are indigenous to Massachusetts, such as maybe our Labour Day and Victoria Day. Because the success of Sunday shopping has been so overwhelming and workers have not been affected, the unions and even the associations for nonunion workers in Massachusetts—they are the same as in Ontario, the majority of retail workers are nonunion in Massachusetts as well—workers are going to be allowed to work on these new holidays and stores will be allowed to open on these holidays. I simply say to you, the reason why the unions and the working organizations in Massachusetts are supporting an extension of the legislation is because they know the labour legislation has worked and that basically employers are not bad people, which seems to be the suggestion by opponents.

Mr. Chairman: A large amount of material was filed with us just this morning, which is being reproduced. In light of the fact that we have used up the full time allocated to Mr. Danson, I wonder if it might be appropriate to ask him if he would be good enough to come back on another occasion, after we have had an opportunity to digest the material, or in the alternative, if Mr. Danson is available, to wait until after we have heard from the next scheduled presenters, the Association of Municipalities of Ontario. If the members of the committee were prepared to sit longer after that, we could have questions at that time.

First of all, perhaps I should ask Mr. Danson, would you be able to come back on another occasion, probably some time in September?

Mr. Danson: The difficulty is that I start a three-week trial in September and then, in the third week of September, we are arguing our Meech Lake case in the Federal Court. So September is a bad month.

Mr. Chairman: In any event, I am advised by the clerk that we have no time anyway. I suppose we could, with the consensus of the committee, sit in the evening to deal with that, or you could follow us around the province. We will be in various locations.

Mr. Chiarelli: Is it possible that we could add half an hour tomorrow or Thursday, when Mr. Danson might be available?

Mr. Danson: I am available today.

Mr. Chairman: Perhaps the second suggestion that I made, if the committee is in agreement with it—

Mr. Philip: No, I am not in agreement with that, for the following reasons. This is a very large brief. There are a number of conclusions and assertions that he has come to as a result of polls that we do not have before us. I think, on examining those polls, I can disprove your conclusions and I would like an opportunity to do so.

Mr. Danson: I would enjoy the opportunity for you to try.

Mr. Philip: I will enjoy the opportunity, and I would very much like an opportunity to give him his day in court under cross-examination.

I would also like to make the point—and maybe this could be settled at the moment—that every witness who has appeared before this committee has stated who his clients are. I wonder if the witness would state who his clients are, since obviously it is a very expensive brief that he has prepared.

Mr. Chairman: I am not sure, Mr. Philip. I carry no brief for the witness at all, but I would think, just as a matter of confidentiality of clients, I will leave it up to Mr. Danson. If he wishes to reveal them, fine, so be it.

Mr. Danson: I will say to you that there is no secret as to who my clients are. They are in the paper all the time. Paul Magder is my client. Hy and Zel's are my clients, National Gym is my client, Sunnybrook is my client. I act for 300 retailers. You do not want me to tell you 300 retailers.

I will say this to you—and I must emphasize this—I am not appearing on behalf of my clients. This brief that I have put together I am paying for myself. In fact, I understand Mr. Magder was here and he did not have the same applause for the government as I have. So I can assure you that I am speaking strictly for myself.

Mr. Chairman: OK. Mr. Philip has made the point that, with the material we have, today would not be appropriate.

Miss Roberts: I agree.

Mr. Chairman: I gather that is probably the unanimous view of this committee. Would that be fair to say? Fine. We will move on from there to try to reschedule a time when it is convenient. I think we have to do it at the convenience of Mr. Danson. Perhaps we will leave it with the clerk to arrange.

with Mr. Danson and to suit his convenience, in light of the fact that he has these problems.

Mr. Danson: The challenge of Mr. Philip is so inviting that I will do my utmost to reschedule my schedule to accommodate any day, even if it is at midnight or two in the morning. I look forward to it.

Mr. Chairman: We do not want to evoke any further crossfire here but we will leave it to the clerk to speak to you and perhaps we can arrange it. I am sure everyone will have an opportunity to read the material between now and the time we come back. Thank you very much for coming forward.

Mr. Jackson: Mr. Chairman, can I seek a point of clarification? On this entire debate we have heard references to this piece of legislation as a "Sunday opening" bill. In fact, Mr. Danson just referred to it as Sunday opening legislation in all those jurisdictions that employed it. I have noticed recently that members of the governing party have begun referring to this as a Sunday closing bill.

Could you inform the members of this committee if there has been a policy change or an optical change on the part of the Liberal government in terms of how they are conveying this? What is the official reference to this bill as far as the chair is concerned? Is this a Sunday closing bill or a Sunday opening bill?

Mr. Chairman: Mr. Jackson, as you know, the chairman of a committee has no views whatsoever.

Mr. Jackson: I was asking you to clarify the nomenclature for this bill.

Mr. Chairman: All I do is make sure that the witnesses are heard fairly and that they are given equal time. If you look at the top of the agenda, it talks about consideration of Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act. As far as I know, that is still the title under which we are operating. If you have any concerns in that regard, you will have to address those privately, if you wish.

Mr. Jackson: It was asked to avoid confusion. It was a specific and reasonable request to the chair to determine if the reference to this bill was going to be the Sunday opening bill or the Sunday closing bill. I think it is a reasonable request. I just wanted to know if we were to be referring to this—to avoid confusion—as a Sunday opening or a Sunday closing bill.

Mr. Chairman: Until I am advised to the contrary, this committee is sitting on the basis of considering Bill 113, as I indicated, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act. That is the reply of the chair.

Our next presenters are the Association of Municipalities of Ontario. I understand that Doris Brick, president of AMO, is here, a councillor for the county of Peterborough; Grant Hopcroft, vice-president of AMO, alderman of the city of London; and Mac Dunbar, executive director of AMO. Just for purposes of the record, perhaps the major presenter would identify those people for Hansard. You can proceed to use all or any part of the 30 minutes. We would

appreciate it if you would leave some time for the members to ask questions. If you would like to proceed, we would appreciate it.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

Mrs. Brick: Thank you very much. I am Doris Brick, the president of AMO. On my left is Grant Hopcroft, who will speak briefly when I complete my presentation, and on my right, our executive director, Mac Dunbar.

Our association welcomes the opportunity to appear before the standing committee to comment on Bill 113, An Act to amend the Retail Business Holidays Act, and Bill 114, An Act to amend the Employment Standards Act. The association appears before you today as a representative of one level of government addressing another and therefore AMO's role should be recognized as being beyond that of many other special-interest groups. The membership of our association has assigned to it the authority to address those questions of municipal interest and concern.

In 1987, at our annual conference, there were two pre-eminent resolutions presented to our approximately 1,200 municipal delegates. One resolution requested delegated authority over Sunday shopping. The other resolution was to the contrary. These two resolutions were a direct result of the report of the select committee of the Legislature on retail store hours released earlier that summer. I wish to advise the standing committee that the municipal delegates unanimously rejected provincial delegation of Sunday shopping to municipal councils.

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Given the mandate of our 1987 conference, the AMO board of directors at our meeting in January 1988 endorsed a motion advising the Premier (Mr. Peterson), the Solicitor General (Mrs. Smith) and the Minister of Municipal Affairs (Mr. Eakins) that AMO was strongly opposed to the announced intention of the government of Ontario to introduce legislation that would delegate the responsibility for Sunday and holiday shopping to municipal government.

As well, 150 municipal councils have endorsed the AMO position, with only two rejecting it. In this regard, it is interesting to note that the association has received support from such large urban retail centres as the municipality of Metropolitan Toronto, the cities of Toronto, Mississauga, London, North York, Ottawa, Windsor and Thunder Bay. In addition, municipalities from tourist areas such as the district of Muskoka, the counties of Huron, Simcoe, Peterborough, the city of Niagara Falls and the village of Wasaga Beach have also rejected the government's proposal.

As president of AMO, I believe that the foregoing stands as an explicit message from municipal councils which represent and speak on behalf of the same constituents as do the members of the Legislature of Ontario. The message I transmit to this committee on their behalf is that the proposal to shift this particular responsibility of the government of Ontario on to municipalities is unacceptable to the majority of municipal governments in Ontario.

The association is not being unduly difficult with respect to Sunday shopping. On February 18, the executive committee of the association met with the Solicitor General and the Minister of Municipal Affairs to discuss how local option might best be implemented through legislation. The Solicitor General and the Minister of Municipal Affairs were advised of the

association's complete willingness and desire to review the present legislation for the purpose of correcting what the government has described as "inadequacies" and "unfairness." The association's offer of co-operation and assistance was repeated again at our meeting with the Premier and cabinet on March 30, but was rejected.

AMO does not believe that the present legislation is unworkable, nor does it believe that the current "local option" represented by the provision for a municipally designated "tourist exemption" is inappropriate within the present legislation.

Under the present Retail Business Holidays Act, municipalities have the opportunity to designate selected areas of their municipalities as tourist areas, thus exempting these areas from the provision of the act regulating retail operation on Sundays and holidays. It is this opportunity that the Solicitor General has maintained to be the local option already in place under the current legislation.

To date, between 100 and 125 municipalities have chosen to exercise this option in selected areas of their municipality and, contrary to what the Solicitor General has stated, have acted in a logical and consistent manner in designating the tourist needs of their community. For this reason, the association supports the present legislation as it relates to the tourist exemption.

The Solicitor General's position that municipalities have always had the opportunity to opt out of the provincial framework using the local option and that Bill 113 therefore introduces no fundamental change to the concept of local option is unacceptable. AMO believes that the local option created by Bill 113 is significantly broader than that which currently exists. The exercise of this broader option will encompass and affect a more extensive range of interests and create a wider spectrum of consequences. As a result, a municipality will be compelled to undertake more extensive impact studies in its deliberations to exercise the proposed local option.

AMO is concerned that in instances where a municipality, under the provisions of Bill 113, opts to depart from the provincial scheme for Sunday and holiday shopping and pass its own enabling bylaw, the increase in the level of municipal retail activity will bring with it an increased need for such municipal services as police, fire, public transportation, day care and waste management. The need to provide such additional municipal services will mean an increased burden on the property taxpayer, as the costs of such services are not recoverable from increased retail activity.

We note too that in Bill 113 the province may not have been too consistent, in that it is giving regions the authority to make the decision on local option, while the county level of government has been totally ignored in this bill. I think that is a point worth the committee's consideration.

The fact is that under the broader local option provided by Bill 113, more municipalities will be forced to grapple with these factors in a complex decision to permit Sunday and holiday shopping than under the current tourism exemption clause. This further reinforces AMO's contention that the proposed local option is fundamentally different from that which currently exists. In addition, AMO is concerned with the apparent shift from the social intent of the Retail Business Holidays Act to the more commercial emphasis in the debate surrounding Bill 113.

AMO fully supports the principle recommended by the select committee, and endorsed at the time by the now Solicitor General, that "the primary responsibility for the administration of the act should remain with the province as the senior level of government." The association is firmly opposed to what it perceives as the transfer of a complex and socially divisive issue by an indecisive provincial government under the guise of municipal autonomy.

Bill 114, An Act to amend the Employment Standards Act, is somewhat more intricate in that it deals with labour law and the rights of employees and employers within the retail sector. The bill sets out the right of a retail employee to refuse unreasonable Sunday assignments and establishes a procedure and a process for mediation by an employment standards officer and subsequent referral to an independent referee.

The appropriateness or the practicability of Bill 114 is a matter that individuals will address whether they be from the public, private or union sector. Their concerns will no doubt centre on the proposed process that institutes yet another level of provincial intervention into employee-employer relations.

Our association has an additional concern which relates to the extension of Bill 114 to the municipal sector and the subsequent impact upon municipal collective agreements and employee remuneration. The association submits that whether or not a municipality is open or closed on a Sunday or holiday, the principles within the legislation will at some point in time be applied to the public service at the municipal level. The result in real terms will mean additional operational expenditures for municipal governments that are not recoverable from increased retail activity and that do not relate to Sunday or holiday shopping.

As president of AMO, I will be addressing this issue at our upcoming conference on August 22. We know, before going to our conference, that we have resolutions from a good number of municipalities, and quite likely our association will be reaffirming its earlier position.

I would like to conclude with four main points.

1. The association maintains its willingness and desire to provide its advice and direction in the preparation of fair and adequate legislation.

2. The association challenges the need for the fundamental changes proposed by Bill 113. Similarly, AMO questions the existence of serious problems with the current legislation that could not be remedied with the adoption of the recommendations of the select committee.

3. The association believes that the broader local option provided by Bill 113 is fundamentally different from that under current legislation, threatening a greater number of municipalities with the need to make complex and socially divisive decisions.

4. Finally, and perhaps most important, AMO considers the province the most appropriate level of government to be dealing with the issue, given the wide-ranging considerations and ramifications involved. The association resents the use of AMO's goal of municipal autonomy by the Solicitor General as a justification for the transfer of what is in reality an issue that the province is unwilling to resolve. Rather, AMO would prefer that the province act on other issues that would truly enhance municipal autonomy.

I will now turn to Grant Hopcroft, the vice-president of our association, who will elaborate further on the tourist exemption.

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Mr. Hopcroft: I am going to deal very briefly with an issue which appears to have been discussed by the committee when the minister made her presentation on the bill. We understand there have been suggestions in the past that AMO has not been prepared to co-operate with the government or to assist the government in resolving the issues that have arisen out of the problems with the Retail Business Holidays Act.

AMO has repeatedly offered to assist in coming up with some new definitions to resolve the problem areas of the act within a provincial framework. Last December, shortly after the Solicitor General's announcement in the House, an informal meeting was held by the Solicitor General, the president of AMO and me, and at that time we indicated AMO's willingness to work with the government to come up with amendments acceptable to municipal governments, specifically in trying to redefine tourism in an acceptable manner.

As the president mentioned in her presentation, this offer was repeated during more formal meetings that we had with the Solicitor General and with the Minister of Municipal Affairs through the formal meetings that our executive holds under the auspices of the Ministry of Municipal Affairs. Again, as she mentioned, our offers were rejected and we were told that the province, with all its legal resources, cannot adequately define tourism at the provincial level.

However, on June 16, when the Solicitor General addressed the annual general meeting of the large urban section of AMO, she was asked what legal opinions were available from the government to support its position that tourism was incapable of being properly defined at the provincial rather than at the local level. The Solicitor General refused to give any details on those decisions or to release any such legal opinions that might be in the possession of the province or of the various ministries.

AMO repeats its offer: We are fully prepared to enter into discussions with the province to come up with an acceptable definition of "tourism" within a provincial framework, but we feel very strongly that it must be within a provincial framework where the local option and the domino effect are not things that become overriding factors.

Mr. Chairman: Are you prepared to accept questions from members of the committee?

Mrs. Brick: Yes.

Mr. Chairman: We have approximately 18 minutes, so six each.

Mr. Philip: You dealt with an issue that both Mrs. Cunningham and I questioned the minister extensively on. The minister, specifically in response to the question, "Did you consult with the Association of Municipalities of Ontario around the definition of 'tourism'?"—and remember that this was in the context that the minister said a definition of "tourism" could not be found and therefore she had to bring in this legislation—responded: "I met

with AMO on this. They refused to discuss any of these issues. Nobody...not any municipality, has proposed a definition of 'tourism'."

I gather from what you have said that you are saying the minister in fact was not accurate in her information to the committee, that you at no time refused at any meeting you have had with her to assist her in coming up with a more appropriate definition of "tourism" under the present act.

Mr. Hopcraft: That is correct. We have said we were not prepared to discuss local option, because that is something we have no mandate to discuss from our board; however, we have expressed on numerous occasions a willingness to work within a provincial framework, without the local option, to define "tourism" and come up with other definitions that would fit within a provincial framework.

Mr. Philip: Would I be safe in saying that we have, clearly, two kinds of information before the committee: one in which you are saying that you offered to be co-operative with the minister in coming up with an acceptable definition under the new act; and the other being the statement by the minister that she met with you and that you refused? Both statements cannot be truthful. One of them has to be wrong. Would that be a reasonable, logical conclusion that someone in my position has to make?

Mr. Chairman: Mr. Philip, you are reading, obviously, from Hansard. For the benefit of the other members of the committee, can you tell them what page you are reading from?

Mr. Philip: Page J-23.

Mrs. Brick: Our response to that is there is one difference from what you have stated. Our offer was made provided that it would be under a provincial framework. We made our offer to sit down and define "tourism," and on more than one occasion.

Mr. Philip: One of her arguments is that this is a provincial framework and this bill is a provincial bill. Can you tell me, prior to the introduction of the bill on April 25, 1988, did the minister at any time meet with you and ask for your assistance in dealing with the inequities in the present legislation?

Mrs. Brick: We had a discussion with her in December, a very informal one, but no, there was never a formal request made to us.

Mr. Philip: So your co-operation was at no time sought by the minister before she introduced this legislation, legislation which she says was precipitated mainly because the present definition of "tourism" does not work?

Mrs. Brick: That is correct, and we have repeatedly asked for specific examples of where municipalities were abusing the tourism exemptions and how many municipalities were using this exemption. We were unable to get responses until the day the bill was released in the House. We were told at that time that there were 25 municipalities in Ontario using this exemption. It was later up to 47, and we have reason to believe that there are likely well over 100 using it in some areas of their municipalities. But it was with great difficulty that we got that information.

We have been told by the Solicitor General that there are a lot of cases

before the courts of charges on Sunday shopping. When we inquired about how many, to try to determine just how widespread this problem is in Ontario, we did not receive any confirmation of numbers.

Mr. Philip: Is it safe to say that prior to and after the introduction of the bill, the Solicitor General and this government have proved to be unco-operative in providing information which you have sought as municipal councils in dealing with some of the very inequities which were pointed out in the select committee, which the Solicitor General uses as justification for this legislation, and that she rejected your offer of assistance, specifically the offer made on March 30 after the bill was introduced? Is that a fair statement?

Mrs. Brick: I believe that is fair. We spoke to her three times.

Mr. Philip: Would you say it is possible co-operatively to come up with a definition of "tourism" which is enforceable, fair and would work in all jurisdictions, be they rural or urban, in Ontario?

Mrs. Brick: As an association, we are certainly quite prepared to try to do that. We recognize that if the province, with its wherewithal, is unable to come up with a suitable definition and it passes the task on to municipalities—how can they be expected, especially in the rural areas of Ontario, and they represent the vast majority of this province, on their own, to come up with definitions?

Mr. Philip: Would you say that at least under the present legislation you have some idea of what a tourist area is?

Mrs. Brick: I believe so.

Mr. Philip: Would you agree that under the legislation being introduced there are absolutely no guidelines on which a decision would be made municipally as to whether stores are open on Sunday?

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Mrs. Brick: Are you referring to Bill 113?

Mr. Philip: Yes.

Mrs. Brick: That is right.

Mr. Philip: Would you agree then that there is less structure, less provincial leadership if you want, less formal ways in which you can make a decision as councillors in this bill than even under the former legislation?

Mrs. Brick: Yes.

Mr. Chairman: Mr. Philip, your time is exhausted. Mrs. Cunningham.

Mrs. Cunningham: It is a pleasure to have you here at the committee meeting today. I know that many people in Ontario have sought your leadership in the past when it comes to municipal issues, and we are seeking it now.

My dilemma is that we have been told by the Solicitor General that there will not be major changes made to the bill. The good news is that yesterday, in response to the question that I asked everyone, to assist in the definition

of "tourist area," as they were requested to do, you have given my colleague a positive response to that and, in fact, have clarified an issue that was of concern to me on the first day of hearings. I thank you for that.

I thought you might be interested in the Solicitor General's bottom-line response to the question: What makes you think that a municipality can come up with any better criteria as to why certain stores should remain open when the province cannot? That was the question on page 10 of the proceedings. The bottom-line answer was that every municipality would have to look at its own situation because it would be a bylaw. So I do not think you have a lot of guidance from the Solicitor General in your dilemma. I just want you to know that we all share your concern; at least, the opposition members of the government do.

I would like to ask you about myths, and have you respond, for my own information. The previous speaker may have got a lot of persons excited or upset with his presentation to the committee.

Mr. Chairman: Was that Mr. Philip?

Mr. Jackson: Mr. Callahan.

Mr. Philip: I was very careful. I did not say that the minister misled the committee even. I could have said that.

Mr. Chairman: I am just trying to get clarification. That is all.

Mrs. Cunningham: The previous representer to the committee was Mr. Danson. A lot of people got very excited by his comments. I was not excited; I can hardly wait to have my opportunity to question him. But I was a little perturbed by a lack of homework, and that has to do with the myths.

He spoke of three and, indeed, the three that he spoke of as being the Solicitor General's comments on myth were none of which she spoke to at all. His brief was based on destruction of family, the exploitation of workers and the decay of society. I would like to ask you about the minister's myths today. Those were, I think, the essence of his presentation. He was responding to those. They were not the myths that she presented, so I would like to ask about the ones that she did present.

The first one she talked about was the myth of wide-open Sunday shopping. Is it your understanding that this legislation would in fact lead to more wide-open or extended Sunday shopping? Do you believe it would? Do the municipalities believe it would?

Mrs. Brick: When you put the option to the municipalities, we believe that yes, indeed, it will, because there will be such pressure brought from the business community within municipalities that it will have the domino effect of spreading from one to another.

Mrs. Cunningham: In fact, that was her fourth myth, that there would be an immediate domino effect. So you have answered myths 1 and 4.

She stated that she thought another myth was that the Retail Business Holidays Act is working and should be left alone. I personally did not think it was working and I wonder if you did.

Mrs. Brick: We can certainly see that it could be improved upon.

Mrs. Cunningham: She also considered as her third myth that this would be a new and onerous responsibility on the municipalities, and I wonder if you would like to comment on that.

Mrs. Brick: That that is a myth?

Mrs. Cunningham: She thinks it is a myth. That was the third myth, quoting from her speech.

Mrs. Brick: I think it will be onerous on municipalities. Some of the onerousness will take a while to come to fruit, if you will. For instance, we will not see the impact of some of the services that I mentioned in my presentation: public transportation, day care, waste management, police and fire protection. The impact of increased services on a seven-day operation will not be felt in the first six months or a year after the legislation has been introduced. It is going to take a period of three to five years before municipalities will fully feel the impact of such changes, so it is going to be onerous.

Mr. Hopcroft: I think one of the things, from a legal perspective, that should be mentioned as well is that a municipal bylaw is a municipality's responsibility as far as prosecution in court and bearing any legal costs of both any trials and any appeals from those trial decisions. That again, particularly for a small municipality that does not have a full-time legal department, can be a very onerous responsibility.

Mr. Dunbar: We have not added the additional service that will be coming, that is, transportation for the disabled, which now, generally speaking, is not a Sunday requirement but will be in urban centres.

There is another area I can see coming up in the future, about which I talked to the chairman of the Ontario Municipal Board, and that is increased annexation hearings. As you know, there was a major one in the Barrie area, one of the largest annexation hearings in this province, which related to the annexation of shopping. I can see that coming up in municipalities whose downtown business says, "They are open in the periphery, and we want you to proceed with annexation so that we can get control of it." That is going to be divisive to municipalities as well.

Mr. Chairman: I think we have about reached that time. I will give you a quick one.

Mrs. Cunningham: Good. I will not ask about the fifth myth then, but I will ask the other question that was important to me. Earlier in the hearings today we heard from Suzanne Scorsone, who was from the Office of Catholic Family Life for the archdiocese of Toronto. She made a statement that the Supreme Court of Canada has already ruled that the existing law is constitutional and that the effect of a common pause day on families is highly desirable.

I would like one of you to respond in some way to this constitutionality because I am very much confused. If in fact the law is constitutional, then that means that this definition of a tourist area is something that can be defined and is upheld by the law. It is my understand that it was not. The

problem with all of this legislation is that we are trying to build it around something that can be upheld in the courts.

If the province cannot do that and then you cannot do that, does this legislation really lead into wide-open Sunday shopping because nobody can prove anything? Who would like to take that one?

Mr. Hopcroft: I will give it a try. I think there is no question that in some areas the application of the tourist exemption has obviously been a problem. The province has indicated to us that it cannot come up with an acceptable definition, and we are a little in a difficult situation because we have said, "Look, we are prepared to help but we have not been given the details of what the specific problems are."

If those problems are fully aired and the subject of some full consultation with AMO that gives us an opportunity to have the input from our members, we feel that we can come up with something that is going to be workable and enforceable. Obviously, it is something that is going to affect the status quo in some areas and may cause some political fallout from that point of view, but personally I feel that a definition can be arrived at. It is just a matter of whether the political will to implement it is there.

Mr. Chairman: All right. Thank you very much. Mr. Keyes and Mr. Kanter, and I do not know which one is going first.

Mr. Keyes: Let's do it alphabetically.

Mr. Kanter: To Mrs. Brick or Mr. Hopcroft: First, I do not think your brief makes too much mention of the provincial framework, the fact that we are not just keeping but strengthening quite substantially the provincial framework whereby most stores in Ontario will have to be closed: We are increasing the fines; we are making enforcement easier; we are allowing evidence of advertisements; we are permitting injunctions to be obtained; evidence of gross sales will be taken into consideration.

Do you support those aspects of the bill?

Mrs. Brick: Who is going to cover the cost of administration?

Mr. Kanter: OK. This may be a tactical question that should more appropriately be answered by Mr. Ritchie—hopefully not during my time—but it is my understanding that under the provincial framework this will continue to be enforced and administered by the province. But perhaps we should let Mr. Ritchie answer that question.

Further to that initial question, would it not be your understanding that in those areas of the province that do not wish to change, perhaps rural areas, they are under no obligation to do anything? They do not have to do any studies, there will be no changes and stores will have to remain closed. Do you understand that is the way the provincial framework would work?

I would like to move on to the exemptions. We have had quite a lot of discussion about exemptions. I will just briefly touch on two or three of them. The exemption to allow Chinatown to be open in downtown Toronto: would you say that is strictly related to tourism or would you say it is perhaps a multicultural component or a social component or something in addition to tourism, with respect to the Chinatown exemption?

Mrs. Brick: Coming from an area well removed from Metropolitan Toronto, I do not feel that we are qualified to respond to that question. Someone from the city of Toronto quite likely could.

Mr. Kanter: But would it be possible that there is something in addition to tourism that caused the city of Toronto and Metropolitan Toronto -- to approve that? Is that a possibility?

Mrs. Brick: I would not comment on it.

Mr. Kanter: Let me go to another one. Again, it is not a municipality in your area. The municipality of Thunder Bay, which I understand has an exemption to permit handicapped people to shop one week in November. I presume it is not limited to handicapped tourists but would include handicapped people from Thunder Bay.

Mrs. Cunningham: One day in November.

Mr. Kanter: One day, one Sunday in November, that is correct. Would you say that there might be a social policy—helping the handicapped—some criteria in addition to tourism that might be involved in that particular exemption?

Mrs. Brick: If it is possible, I was not aware of it.

Mr. Kanter: Do you think there may be situations where municipalities might, quite validly and properly, look to criteria besides tourism when they allow stores to be open in their communities?

Mrs. Brick: I cannot speak for every one of them, but I do know that in my own community we have an exemption for one particular business. We looked at the tourism aspect in dealing with and preparing that bylaw.

Mr. Kanter: There are four or five different villages and townships I think in your county that are open. It would be your view that all of them would be essential for the development of tourism business.

Let me go on to the process by which exemptions are granted under the current law. Is there any requirement or notice of hearing or meetings or informing citizens that a change is going to be made under the current law, that some stores are going to be open on Sunday?

Mrs. Brick: No, there is not.

Miss Roberts: I did not hear that. I did not hear the reply.

Mrs. Brick: No. The question was, "Are there guidelines under the current legislation in preparing bylaws?" No, I am not aware of any.

Mr. Dunbar: Except that maybe the individual municipality will have a set of standards with respect to passing a bylaw which under its own procedural bylaw says that it must give so much hearing. But those are ones that are adopted by the municipality itself in the conduct of its own business.

Mrs. Brick: It is not through the province.

Mr. Kanter: Would it be helpful, because I know you talked about uncertainty and indeed, a number of people have talked about uncertainty, if

there were going to be a change from the provincial framework—and I think this applies either under the existing law or under the new bill before us—to consider adopting some sort of process or procedure by which citizens could be more aware of a possible change which you have suggested could be a very substantial and dramatic change to some people in some communities? Would that be a possibility to consider?

Mrs. Brick: Without endorsing that it will happen, yes, there should be a process that would be consistent across the province.

Mr. Kanter: I heard a lot of discussion and I really do not want to get into it; I was not present at most of the meetings. I may have been present at one or two discussions about who was co-operating with whom over what conditions and things like that.

But has the time not come now to perhaps put aside some of these difficulties that occurred in the past, without assigning any blame to them, and to work with the government and the opposition parties to try to work out a better Sunday shopping law than we currently have?

Mrs. Brick: I think we have been expressing our interest and attempting to do that throughout this process.

Mr. Kanter: I would just like to—

Mr. Chairman: If Mr. Keyes is to have any time, there is only about one minute or so left.

Mr. Kanter: I will defer to Mr. Keyes.

Mr. Keyes: Thank you. To the AMO members, again, I appreciate your brief.

You did make some reference to its being difficult to know just to what extent you have exercised municipal option. I do not believe it is a private document. It was prepared and distributed to us by the ministry. We have a list here of 10 pages of literally every town, regional municipality and the rest of it—and we cannot authenticate that it is 100 per cent accurate, but we think it is—which shows exactly the options that have been taken everywhere in the province.

As you look at these, they certainly step outside the boundary of what I consider to be simply tourist area. I hope you would agree that perhaps while we have broadened the aspect of allowing municipalities to make decisions, it has been done to accommodate what they themselves have already done. I notice in one town that one little ward of the town is open. In another spot, it is only one mall in a town. In another spot, it is a store that sells kitchen equipment that has been open. So I suggest to you that out of the 100-plus local options that have been optioned, many of them are not done just for tourist reasons but for convenience purposes. I believe that, surely, that is exactly what this law is providing to the municipalities, an opportunity to legitimize what they have been doing.

Again, I think we have not handed over the responsibility to the municipalities. We are saying the framework is there to operate. If 500 or 600, which is approximately the group at the moment, have made no changes whatsoever, we have not handed the responsibility over to them. We have still kept that responsibility. For those who decide in their own area, because of

diverse needs or the desires of their residents, that they should do something different, they have done it, and it was not always for tourist purposes. I think that is exactly what this legislation has provided you with.

Mr. Chairman: Did you wish a response?

Mr. Keyes: I wanted to see if she would agree with that.

Mrs. Brick: I would respond to that by saying that the association, from the day the minister made the announcement in December, asked for, if it were available, the list of municipalities that had passed exemptions, because we had no way of knowing ourselves. We still have not seen that list. You are privy to something that we do not know, so we cannot really comment. Has it been abused and where are the municipalities coming from?

We do know of some that have come forward and informed us, and we have reason to believe that indeed there likely are 100 or more that have selected some areas. That is the important thing. These municipalities have not passed bylaws that are wide open. They are usually very restricted to one or two small businesses, and we do not have that list. We asked for that consistently in every meeting we had, with both the Solicitor General and the Minister of Municipal Affairs, to try to come up with some responses and take a look at it. Again, as part of our willingness to look at coming up with a definition, it would be very necessary to know what is in place today.

Mr. Dunbar: At one meeting with the Solicitor General, it was suggested that the tourist exemption as it presently exists within the legislation is a logical threshold to make decisions for the municipality. In fact, one example was given that there was a downtown area that was not open, but a resort area five miles away from the downtown area provided that municipality with a logical decision-making threshold. That is why the association preferred the existing legislation and has the willingness to work to improve and get away from these so-called inadequacies.

Mr. Chairman: Thank you very much. We appreciate your coming, particularly from Peterborough, which must be just magnificent this time of the year.

Mr. Jackson: I have one very quick request of the committee. The AMO deputants who are now leaving indicated that they had requested statistics from the Solicitor General and she was unwilling or unable to provide those for them. Given that is something which this committee can pursue, I would ask you, Mr. Chairman, if you would obtain the statistics on the number of charges and the amounts and the jurisdictional breakdown with respect to the existing legislation and charges laid by the Solicitor General's office in this regard.

If we could be furnished with those statistics for our own committee activities, we, in turn, could obtain this information for AMO. I would appreciate a ruling, because I would be prepared to make a filing under the Freedom of Information and Protection of Privacy Act.

Mr. Chairman: If there is unanimous consent of the committee that I be instructed to do that, I will certainly do it.

Mr. Jackson: Is there any objection to our getting the information?

Mr. Kanter: It sounds as if the information Mr. Jackson is asking

for is of a legal nature, and I would prefer to refer it to Mr. Ritchie of our ministry to respond to that request. I just do not know.

Mr. Jackson: I get them all the time for traffic accidents, from my constituents, for a number of matters. I specifically indicated the charge, the amount and the jurisdiction. I did not indicate who was being charged. I know you as a newer member may not be aware of that, but it is quite common for us to request it, and we have a former Solicitor General here who might wish to comment. The information is available.

Mr. Kanter: Perhaps if we could ask the representative of the ministry to respond to that at an appropriate time. I just do not know if there are problems—

Mr. Chairman: Either that, or if it is the wish of the committee that I investigate that avenue—

Interjection.

Mr. Ritchie: Mr. Chairman, at the present time, ministry staff are attempting to pull together what information we can on the charges. It has not been collected in the past. It is collected in a blanket way through police forces, the Ontario Police Commission and Statistics Canada. We do not have a great breakdown on Retail Business Holidays Act charges, but they are attempting to put together what they can at the present time.

Mr. Chairman: Are you satisfied with that, Mr. Jackson, that when it is available it be made available where it is permissible?

Mr. Jackson: Yes, I would be pleased with that.

Mr. Philip: Mr. Chairman, on another point—and I will just take a second—a very distinguished member of the Association of Municipalities of Ontario has been listening very attentively to all of our deliberations and has been in our audience. Controller Howard Moscoe is here, and I think we should recognize his presence. We are looking forward to his brief. I am sure that Mayor Lastman, who is glued to his TV set and who always wants to know where Howard Moscoe is, would like to know that he is here and that he is paying attention to our deliberations.

Mr. Chairman: I always found it helpful, too, because my wife always knew where I was.

Would the committee please stay? We have a few items to discuss. It will be very brief, but I am advised by the clerk that they are perhaps items we should discuss in camera.

Mr. Philip: Can we not do it after lunch?

Mr. Chairman: I think we should do it now. It will not take very long.

Mr. Philip: Let us take a five-minute recess and then do it, OK? I am taking a five-minute recess. I am sorry.

Mr. Chairman: We had actually agreed yesterday, Mr. Philip, as you will recall, to do it.

Mr. Philip: Some of us have other things to deal with at the moment. I will be back in five minutes.

Mr. Chairman: I do not want to be inelastic. You have heard Mr. Philip's request.

First, I would like a motion to move into camera, which would be helpful. Do I have a motion?

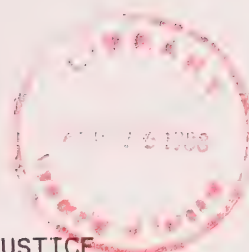
Mr. Kanter: So moved.

Mr. Chairman: Those in favour? I cannot tell who is voting and who is not voting. We are now moved in camera, I would presume, if my count was accurate.

The committee continued in camera at 12:34 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, AUGUST 9, 1988

Afternoon Sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Farnan, Michael (Cambridge NDP) for Mr. Hampton

Jackson, Cameron (Burlington South PC) for Mr. Cureatz

Pelissero, Harry E. (Lincoln L) for Ms. Poole

Roberts, Marietta L. D. (Elgin L) for Ms. Hart

Clerk: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Kanter, Ron, Parliamentary Assistant to the Solicitor General (St. Andrew-St. Patrick L)

Ritchie, John M., Senior Crown Counsel

From the Pentecostal Assemblies of Canada:

Hilsden, Hudson, Co-ordinator of Social Concerns and Public Relations

Wideman, Glenn

Schultz, Laura

From the Committee of Ontario Booksellers:

Borins, Edward, Chairman; Owner, Edwards Books and Art Ltd.

Levitan, Jerry, Legal Counsel; with Robins, Appleby and Taub

From the Canadian Lord's Day Association:

MacInnes, Malcolm

Fraser, Donald

Hamstra, Jerry

Jonkman, Fred

From Hy and Zel's The Supermarket Drug Store:

Goldstein, Zel, Co-Founder

Himmel, Hy, Co-Founder

AFTERNOON SITTING

The committee resumed at 2:03 p.m.

Mr. Chairman: I recognize a quorum. My apologies to the deputants. We did break late, and that is the reason some of the members were a little delayed in getting back.

We have the Pentecostal Assemblies of Canada: Hudson T. Hilsden, Glenn Wideman and Laura Schultz. Perhaps the main presenter would identify the other people for the purposes of Hansard.

I should indicate to you that we are experimenting with a new setup here which is like the round table. We are trying to determine whether the audibility is as good as it was when the tables were in a different fashion, so would you speak up as loudly as you can.

You have 30 minutes. You can use all or any part of that time for your presentation. We all have a copy of it. We would appreciate it if you would leave time for the members to ask some questions.

PENTECOSTAL ASSEMBLIES OF CANADA

Mr. Hilsden: It is a delight for me to be here. I am Rev. Hudson Hilsden, chairman of the social concerns committee for the Pentecostal Assemblies of Canada and I serve as co-ordinator of social concerns and public relations for the Pentecostal Assemblies.

With me today is Laura Schultz, who worked for some 13 months for a ladies' wear store in West Edmonton Mall and has her views on the Sunday shopping issue; as well, there is Glenn Wideman, whose wife is the owner of a ladies' leather goods store in Square One in Mississauga.

The Pentecostal Assemblies of Canada is made up of more than 1,058 congregations with more than 189,000 members and adherents in Canada. About one third of these are situated in our province, and they have a real interest in the subject.

Two years ago, in Edmonton, Alberta, we passed a resolution which said we seek appropriate ways and means of persuading retail businesses to remain closed on Sunday, with a particular emphasis to be placed on the pressure that open Sunday shopping exerts upon the family, the church community and society in general. Then we went on to say that the Pentecostal Assemblies of Canada protests the inadequate enforcement of existing laws and bylaws as they relate to this issue. This was a national resolution, so it applies to this subject here today.

The Pentecostal Assemblies of Canada supports the principle of the common pause day on which the Retail Business Holidays Act is presently based and urges the more consistent enforcement of provincial laws as they relate to this issue, as we have pointed out on page 2 of the paper you have with you.

We believe the act is a form of labour legislation and as such should remain solely a matter of provincial jurisdiction. We have allowed some expansion on that subject on page 4.

The Pentecostal Assemblies of Canada recognizes the difficulties that the government has experienced in enforcing the act in recent years. Several parts of Bill 113 would contribute to the more consistent and effective application and enforcement of the Retail Business Holidays Act, in the absence of section 4, the local option clause.

In particular, we support the size limitations proposed for pharmacies in subsection 3(1) and the increased penalties for scofflaws in subsection 7(1) and subsection 7(3). You will find those expanded upon on pages 3 and 4.

The presence of section 4 and its totally unstructured approach to regulating the question of local option makes the improvements mentioned above virtually meaningless. The failure to provide any predictable or enforceable legal framework to business or municipal governments in an area which affects the quality of life and economic wellbeing of millions of Ontarians is a fatal flaw in Bill 113. We have expanded on those two thoughts on pages 4, 6, and 7.

This flaw cannot be remedied by the supposed protection against exploitative employer practices contained in Bill 114 or by the supposed protection of small retailers from abusive practices by commercial landlords in section 5a of Bill 113. We have also expanded on that on pages 6 and 7.

The PAOC strongly recommends that the committee delete section 4, the local option provision, in order to strengthen the Retail Business Holidays Act as a fair and consistent vehicle for the promotion of Sunday as a common pause day in Ontario.

The PAOC notes that Bill 113 does provide some protection for members of other faiths whose Sabbath or day of rest falls on a day other than Sunday. What we desire for ourselves as Christians we cannot unreasonably deny to others. However, the committee should consider some changes to these provisions to make them less costly and time-consuming to retailers who desire to take advantage of them. These suggestions are found on page 10.

The PAOC is deeply concerned that the bill does not take sufficient account of the impact of this legislation on workers, small retailers, single-parent families and church workers and the impetus it will provide to the progressive disruption of family life in Ontario.

It is my interest here today not to deal with a lot of legislation or a lot of in-depth detail with the bills, but rather to put a human face on our concerns. I direct your attention to page 7, where we talk about the increased pressure for wide-open Sunday shopping. We all know that many of our citizens are required already to work on Sundays because they are employed in essential recreational or tourism services. Others are required to work because of the inconsistent application of other exemptions to the Retail Business Holidays Act.

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We, as a church, are concerned that are more and more people in our communities will be under increased pressure to work on Sundays, the only day many of them have to spend with their families and friends for leisure time and for worship. Local option will almost certainly make matters much worse than they already are. More and more communities will be under pressure to allow stores to open. Competition will force still others to open. The salami-slicer approach to piecemeal exemptions for individual developers or merchants will create a growing momentum towards wide-open shopping in the

name of regulatory fairness and equity. More and more employees will be under pressure to work on Sundays, to say nothing about managers and owners. We say, with respect, that is wrong.

Many people have the idea that wide-open Sunday shopping, if allowed by local option, would affect only those who work in stores. We, as a church, believe it is important to be very honest with the people of our communities. We should all be made aware that a wide-open Sunday shopping policy in any community will have its serious ripple effect.

Sunday work for police and security forces will be increased as Sunday becomes just another business day. Transit systems will have to provide extra employees on the job. Child care operators will face extra pressure to offer seven-day service. Maintenance and delivery personnel will be called upon to service clients whose needs will not wait until Monday. People in nonretail jobs will soon be surprised to learn that they too have been dragged into working on Sundays. We believe that is wrong.

Logic tells us that wide-open Sunday shopping will lead to across-the-board price increases on most consumer goods. Most retailers and their trade associations estimate this increase will amount to a range of six to nine per cent. The reasons are clear, and I will not need to expand on those. Those price increases will be passed on, no question, to the consumers. The only alternative will be to reduce the level of quality of service.

We, as a church, are concerned primarily for the welfare and wellbeing of the poor and the underprivileged in society. The consumers who will be hurt the most by wide-open Sunday shopping will be the poor and those on lower incomes. We believe sincerely that is wrong.

At a time when the demands on human energy and the competition of modern industry and commerce have taken their toll on society, we believe, as a church, that a common day of rest set apart for quiet worship or family recreation and leisure is a necessary ingredient to the health of the community.

We are not alone in this view. The Ontario Law Reform Commission recognized the urgency of a uniform day of rest in its Report on Sunday Observance Legislation. On page 267, it said:

"Thus, while our productive capacity and economic standard of living continue to increase in Ontario, our collective opportunity for the more intangible benefits of participation in leisure activities together with family, friends and others in society continues to decrease. It is in the light of this continuing erosion of statutory holidays and evening hours that we consider it absolutely essential that the government now attempt to preserve at least one uniform day each week as a pause day, before it is too late."

To proceed with this legislation in its present form will be to ignore the advice of professionals in all walks of life. Not only will it rob society of the privileges of enjoying a common day of rest for the convenience of worship and leisure, but we believe it will undermine the psychological, physical and spiritual life of the community, and if that is so, we believe it is wrong.

In drafting legislation, the government appears to have made a sincere endeavour to protect workers who may exercise their right to refuse to work on Sunday. While not attempting to deal in this paper with the provisions and detail of Bill 114, common sense tells us that the legislation likely will create more problems than it is intended to solve.

This is a point that I think is important. We all know that the success of any business depends largely upon relationships and trust that are created and maintained between employees and employers. An employee's refusal to work on Sunday upon the request of the employer would naturally tend to undermine that mutual relationship and trust. Furthermore, if a hostile employer wished to dismiss or failed to promote an employee because of a refusal to work on Sunday, the employer could easily find some other reason to dismiss or not promote the employee.

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No legislation can provide a basis for harmony among workers. This must be built on fairness and understanding. We, as a church, believe it is our responsibility to find ways to promote harmony in the community. If one employee is allowed to have an exemption from Sunday work simply on the basis of his religious convictions and another is not allowed an exemption because he is not religious, religion then becomes a source of resentment between employees. The legislation will surely become an instrument of conflict, not only between employees and their employers, but also among employees themselves. We believe that is wrong.

I will take just a moment to talk about family relationships. Much has been said about wide-open Sunday shopping fragmenting family relationships. The government, I think, has made a good point, that in those areas where Sunday shopping is in effect no great threat to the family has resulted. Nevertheless, we, as a church, wish to emphasize that families are the primary building blocks of society. We do not believe the family structure is going to be destroyed simply because we will have wide-open Sunday shopping. If that is the case, the foundation of the family structure is very weak indeed.

What we are saying is that wide-open Sunday shopping is one more negative influence against the family, which is already under severe attack. The emphasis on commercialism, materialism, secularism, drugs, alcohol, pornography and a host of other cultural pressures are twisting and dividing families today. This legislation, with its local option implications, will undoubtedly separate certain members of the family on that one day a week on which family relationships and togetherness can be nurtured. If that is the case, that is wrong.

We also deal with the single-parent families, on page 12. I think that has been dealt with by others quite readily, but we are very concerned about the latchkey children and the problem all this brings, children being in school five days a week deprived of their parent or parents one more day.

Finally, we are concerned about church workers. We do not deny that. Wide-open Sunday shopping, which almost certainly will result from this local option legislation, would have very serious effect upon those retail employees who hold responsibilities in religious services on Sundays. We, as a church, have a good reason for concern about the impact on our local churches and for those who want to serve their churches. Sunday school superintendents, ushers, choir members and other holders of church offices may find it too stressful to maintain their responsibilities early Sunday mornings and then rush off to

work for the rest of the day. It has been our experience that those who must work on Sunday usually opt out of regular church work. If that happens, and it surely will, then we believe that is wrong.

There are surely values and traditions in every society worth holding on to, and we are confident that this committee's present hearings, just as much as its past consultations with the people of Ontario, will confirm that the Sunday tradition is one of these.

I would like to also invite Laura Schultz very briefly to give her views on her own experience in Edmonton.

Miss Schultz: I do not feel it is my place to reiterate what Reverend Hilsden has said. I do agree with everything he has included in his brief and I have observed a number of situations which definitely apply to what he has said.

One thing that comes to mind that directly affected me personally was a manager-relationship problem with myself. I made it clear upon our Sunday openings that I did not believe in working on Sunday, that I did not want to do that, but I found it increasingly difficult as time went on to hold to that conviction just because the relationship would be strained. I felt it was my obligation as an employee to work when I could for her.

Second, I found a problem in the relationships among myself and other employees—favours, things like that, people wanting me to work for them. I wanted to do as best I could, yet I had a conflict within myself because I did not feel it was right. I did not feel it was my place to work on a Sunday.

Third, I found that I often missed out on family occasions because Sunday was a special day in our home. I would miss out on the Sunday family dinner. I would miss out on the special things with peripheral relatives, things like that. I found that affected me very negatively. Not that our family would break down over that, but I did find that it was not anything I was happy to do. So that was my experience.

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Mr. Wideman: In addition to what Rev. Hilsden has said, I would concur with what he said but as a small business owner-operator of a store, we had one instance of Sunday opening in our locale. This was Mississauga's opening of its new city centre. We had the Duke and Duchess of York come and the city was declared a tourist area for one day.

Because of this, on the advice of my lawyer, we were forced to open on that day. Now on that day our normal figures would have been a certain figure. We did about 20 per cent of that figure. On talking to other small business owners, they were quite similarly affected.

On the following day, the Sunday, we did about 80 per cent of what we would have normally done on the Saturday. Putting those figures together I came up with two days of work and one day of remuneration. It just did not make sense. I know that is a very limited knowledge but it affected my wife and me negatively.

The part that really hurt is that I have a position in the church to look after children and that job was not able to be fulfilled by me that day. My wife is a Sunday school teacher. She could not teach that day because we

have to be at our business. We do not have trained people at our beck and call without incurring more expense. My son had to have someone look after him that day. Usually, on a regular day during the week, one of us works, the other stays home and looks after our child. We believe this is right. We believe that as a family what we want to do is spend time with our child. We could not do this.

I love to do business. It is a fantastic country we live in, but it is really nice to have one day off as a business owner. What does this speak in the future to me as a small business owner? Will the mighty Square One still renew my lease? If in fact the government can protect me, if it can allow me to keep my doors closed while the mall opens, will Square One re-lease me a space at the conclusion of this lease? You may be able to protect me for the period of my lease, but what are the ramifications for the future?

I love the location we have. The people at Square One have been a phenomenal group to work with. They have been more than helpful, but as business owners and as business operators under pressure from those above, will they maintain the relationship under this pressure? Will they be able to guarantee that we can stay closed even if we do not do the volume of the Sunday?

I believe there will be a lot of pressure placed on small businesses to either produce and stay open, and not always at their will, or to get out. I think, as a whole, our family will suffer from this. That is why I represent myself and my wife here today. We would like to see our families grow together, not apart. That day represents one day that we can be together without any extraperipheral activity.

Mr. Chairman: Thank you, Mr. Wideman. I would like to take some questions. We have roughly three and a half minutes each.

Mr. Farnan: I have to be very brief. We have had some different definitions of the issue. The government has been talking about the municipal option and now it is talking about the Sunday closing issue. Opposition parties have been talking about the open shopping issue and the Sunday working issue. Your emphasis, and I see it in here, is the family issue, I think.

How do you bring all these together? Are all of these views fitting in to the central theme of family?

Mr. Hilsden: I think what we are talking about is that the law at the highest level is a teacher, and the higher the level that the law is crafted at, the higher the level of that teaching is. It sends a message to people.

I think the message by this level of government, the provincial level of government, ought to be that the family is the most important building block we have: not making money, not developing industry, not developing commerce, but the family itself. I think we have to begin to look at that very seriously.

I am not sure if I mentioned all of your thoughts here, but my feeling is that we perhaps have not allowed the family, and all that that means, to be as large a factor in the development of the issue as we should have.

Mr. Farnan: There is a prophetic theme here of the prophet describing a situation, a repetitive, "That is wrong." I think it is a very clear message to the government that, from the point of view of the

Pentecostal Assemblies of Canada, the course on which the government is taking the province in this regard is wrong.

Very simply, what do you hope to achieve by appearing before this committee and what do you hope the government will do with the kinds of information it is receiving in briefs such as yours?

Mr. Hilsden: I think the recommendations of the select committee were that this is a provincial responsibility and that we ought to go back to the drawing board. Rather than placing it in the hands of the municipalities, consult again and again and again, and perhaps consult with people like ourselves who are concerned about the family, and try to craft something that will be a building mechanism for society, rather than simply give in to the pressures that are abreast today. I believe it is the provincial responsibility to take another look at this and to strengthen the law.

I realize it is difficult. I have followed this for years; this is not our first time around. I know it is difficult but I believe the answer is not in giving up responsibility to the local community, which will have an even more difficult time resisting the pressures.

Mr. Farnan: Do you have the sense of being a prophet crying in the wilderness?

Mr. Chairman: Mr. Farnan, I am sorry, I have to move on beyond you to Mrs. Cunningham. But I think your question has been asked and perhaps it can be thought about.

Mrs. Cunningham: Thank you, Reverend Hilsden and Miss Schultz and Mr. Wideman, for coming today to present this very thoughtful and important brief to our committee.

My question has to do with a presentation that was made this morning and one that will probably be made again. Where there is wide-open Sunday shopping, and the example I will use is Massachusetts, which was brought to our attention this morning, the presenter indicated that this is now a family day and that everyone has a wonderful time shopping on Sundays and in fact there has been no deterioration of the family. I would just like you to make an observation on that remark for us.

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Mr. Hilsden: I was here for that presentation this morning and was amazed to hear that put forward, because I just came back from Massachusetts. I spent two hours in my car driving back from a wedding in Springfield, Massachusetts, to Taunton. All of the time we talked about the Sunday shopping issue. One of the chaps in the car was a worker, a retailer. I asked him the very question, "Do you ever see a whole family shopping together?" He said: "Absolutely not. I've never seen one yet." I asked him a second time: "Be sure now, because I want to know. I may be asked that question." He said, "I have never seen a family shopping together and enjoying it, talking about father, mother and three or four kids, as a kind of a recreational occasion."

In the car as well was a court clerk who has heard hundreds and hundreds of cases of family breakdown. He contributed to the conversation and reiterated the fact that he felt this was a negative influence as well.

Mrs. Cunningham: I think one of the most important statements that

you made in your brief is the closing. That is about the values and traditions in every society that are worth preserving. As a former school board trustee, I can tell you that I have been involved in the issue of opening exercises in schools and what anthem we will sing and what the order of work in schools will be for a number of years.

I am proud to say that I still think we have traditions in our schools in Ontario that were ours, yours and mine, when we were there. I agree with you. I think this is a tradition that we should in fact be supporting and practising in this province and in this country. I thank you very much for that statement.

Mr. Chairman: Your three minutes have gone by.

Mrs. Cunningham: OK. Thank you very much.

Mr. Pelissero: Thank you for your presentation today. A lot of time and effort has gone into it. I think it will be helpful in shaping the final outcome of the legislation.

I should probably start off by declaring a bit of a conflict of interest. I sit on the board of deacons of the Vineland Pentecostal Church. I declare my conflict of interest right up front, so to speak.

On page 3 of your brief, you talk about some of the responsibilities and directions that we, as a government, have taken to amend the act. The way I read it and understand it, in the absence of the local option, you think the proposed legislation is better than the current legislation.

Would you care to expand on that aspect and also maybe touch on the existing operations which are open in terms of the 100 to 125 municipalities that have declared either parts or all of their municipalities to be open? What advice could you give to the government in terms of dealing with those?

Mr. Hilsden: I think my cry here is for fairness. Lots of people have asked me, "Are we going to go back to where there is no shopping at all on Sunday?" We are not calling for that. We are calling for holding the line and perhaps cutting it back a little bit.

But the present legislation, the Retail Business Holidays Act, particularly the tourist exemption aspect, is certainly not a fair thing. It is out of control. There are certain things that this bill has done, I think, to move towards correcting those inequities. I think there are some good things happening here, but to bring it to a local option would undermine all of that. In other words, it would make it even less enforceable.

Mr. Pelissero: If the local option were removed, how would you accommodate, say, gas stations, convenience stores, that kind of thing? Should the provincial government be the determining body that would decide which store is going to open in each municipality?

Mr. Hilsden: What I would really like to see, ideally, would be to go back a few years, and it is not wrong to go back, when it went to a rotation system. It was not so much competition, but it was a matter of servicing the people. A plan was laid out so that you could buy your gas at certain strategic areas of the city but not in every service station. That did not kill anybody and we were able to get gas, but it was not a competitive thing. That type of thing, I think, would be helpful.

Mr. Pelissero: OK. Just in closing, you talk about essential recreational activities and centres. What would you define as an essential recreational activity? Maybe the question is more directed to Miss Schultz, because I have visited the West Edmonton Mall, with the ferris wheels, the indoor skating rink and the wave pool, etc. Help us define an essential recreational service or activity.

Mr. Hilsden: I know this is a very difficult area. Of all people, I am not here to be legalistic, because we cannot make people religious by law, but I do think we bring a message by saying, "Hey, let's cut down on the number of hours," for instance. Let's not have it wholesale. Let's start saying, "Hey, hold up a bit." We cannot make everybody go to church on Sunday and we cannot deprive people of recreational facilities on Sunday. Let's cut it back a bit, to convey a message that, after all, this is a day that we hold not only in reverence for God, but also in consideration of family and the relationships we desperately need to build in this country.

Mr. Chairman: I am sorry. We have to end on that note, but it is a good note, I think, to end on. We appreciate your coming here and taking time out of your busy schedule to appear and give us your thoughts. Thank you.

Mr. Hilsden: It has been a pleasure, Mr. Chairman.

Mr. Chairman: The next delegation we have appearing before us is the Committee of Ontario Booksellers, Edward Borins, chairman, and Jerry Levitan, counsel. Perhaps you gentlemen would come forward and have a seat, and whoever is to be the main presenter could identify the people before us for Hansard.

You probably were here, but I will reiterate in any event that we would appreciate it if you would speak up. We are testing a new circumference. You can spend all or any of the 30 minutes that you have on your presentation, but we would appreciate it if you would leave time out of that 30 minutes for questions to be asked by members of the committee. OK, if you would like to proceed.

COMMITTEE OF ONTARIO BOOKSELLERS

Mr. Borins: I am Edward Borins. On my right is Jerry Levitan. I am going to speak briefly and then Mr. Levitan will. We will be happy to answer your questions after that.

It has been more than a year—it was June 29, 1987—since Bill 188 was passed allowing bookstores to open on Sunday. I felt I should reappear. It is pleasant to be back again and see some familiar faces. I have been away for more than a year and it is nice to be back in this capacity now.

Mr. Philip: You were successful last time.

Mr. Borins: We were successful, yes, bookstores were. I thought I should give the committee the benefit of my experience as a bookseller, but I emphasize the bookseller aspect of it. I am talking about the book business. I will talk about three points: (1) the effect on my business, Edwards Books and Art Ltd.; (2) the effect on the book industry; (3) the effect on my personal life.

First, the effect on Edwards Books and Art. This past year, when we have been free to open on Sundays and when we wish, our business has increased by 20 per cent. I am comparing three stores against three stores. There is a

fourth that has opened, but I am not taking that in. Of the breakdown of our business, we do approximately 40 per cent to 50 per cent of our business on weekends, and it is really a toss-up which day will be better, either Saturday or Sunday. One never knows. Then there are also certain holidays—January 1, Good Friday—which are very big retail days for our business.

I think the reason for the happy increase was that many people perceived, because of the attention Edwards was receiving, that we really were not open on Sundays even though some of our stores were in the past year, but with the passage of Bill 188, many more of the public became aware that we were open for business every day of the year except Christmas Day.

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The fact that we had to close for several months in the winter of 1977 hurt us tremendously. Many of our competitors stayed open. The law was not very clear as it pertained to bookstores and how many magazines a bookstore sold. It is quite complicated and I will not get into it, but it did hurt us until I took the initiative at the recommendation of Mr. Levitan to form the Edwards Sunday Book Club. Within a matter of two months, we had 10,000 customers who had signed up for this book club. These were people who felt very strongly about culture.

We owe a lot of our success in having Bill 188 passed to these customers, who were tremendous in their support and encouragement. They pointed out that if Toronto is to be perceived as a world-class city with a domed sports stadium, then let's not discriminate against culture. These were people who felt it is equally as important to be able to browse in a bookstore as to go to a movie, a video store or a sporting event. All three political parties saw this distinction and realized it would be unfair to discriminate against people who enjoy having their pause day enhanced by being able to browse in bookstores.

Still on the effect on our business—I have given you the financial effect. In terms of staff we have no problems. We have a union. We have had a union at Edwards since 1983. The union was very supportive of the idea of bookstores being open on Sundays. That certainly helped alleviate any problems. The vast majority of our staff on Sundays are part-time workers who are students and look forward to this extra day when they can make some extra money, who enjoy working in a bookstore. Bookstores are pleasant places to work.

The second point, the effect on the book industry: I can really say that nothing dramatic happened at all. There are no major changes. There was barely a ripple created in the book industry through the passage of Bill 188. You have to realize that booksellers are highly individualistic people and they really do what they want to do. You did not find a rush of booksellers opening on Sundays who did not want to be open. Consequently, those who wanted to be open were allowed to open and were very happy.

A comparison I might make is comparing the book industry to the restaurant industry. There are many restaurants in Toronto that choose to close on Sunday even though they can be open on Sunday. It is the same with bookstores. The passage of the bill really had very little effect on who stayed open and who closed.

Third, the effect on my personal life: you have my résumé, which gives some of my background. We started Edwards nine years ago in August 1979. My

wife and I are equal partners and owners of Edwards. Our children are now 19, 17 and 14, all healthy, normal children; teenagers, I guess, is the word now. When we started, they were 10, eight and five. We opened our store at 356 Queen Street West with the determination to stay open on Sunday because we had the tourist exemption. We were in Chinatown there. What we did on Sundays was we brought the kids along with us. We did that on Saturdays, too, and we would take the dog down to work. Essentially, at the beginning, it was my wife, myself and one friend who offered to help work for us. Then we gradually picked up staff as we were able to afford it. But the kids survived.

By being open on Sundays, though, we turned it into an exciting retail day for our customers. To a great extent, it was because of their enthusiasm and the support they gave us on Sundays, and having our crazy idea of a New Year's Day sale or a Good Friday sale. I did not know whether I was going to be lynched for having that; people came and thanked me.

It was because of that we have been able to expand now to four stores. We opened a store last spring in the Beach area. Now we have staff of approximately 30 people. We are hoping to do a volume this fiscal year, which has just begun, of approximately \$4.5 million. But we started as a family.

I must say that I cannot accept some of the arguments of small business that they will be forced to work or be ruined if they do not. It is a personal thing. They are not going to be put out of business if they do not work. If they do work, their type of business might generate customers; it might not.

As I say, the book business is very special. The position we took was: "Let's work hard. Let's work as many days as we can." Now on a Sunday I am usually locked up in my office. Occasionally, I get around to the other stores. Sometimes I work. Sometimes I do not. Obviously, we have staff who are happy—I emphasize that—to work on Sunday. Really, since the passage of Bill 188, it has been a wonderful experience for me because the problems we went through in terms of legal harassment and having to deal with the police and lawyers were really quite painful. Now I am free to sell books and do what I love doing.

This year, because we were successful, we were able to open the store at 2179 Queen Street East. We are moving into slightly larger premises at our Bloor and Sherbourne location. All this would have been impossible had not the government, in its wisdom, passed Bill 188. Had it not passed that bill, Edwards Books and Art would probably have disappeared.

I was this close to throwing in the towel because we had incurred such tremendous legal costs by taking the wrong route to the Supreme Court of Canada. The continual threat of fines and warnings from our lawyers that perhaps we should close came this close to forcing us to liquidate our operation.

Fortunately, we own the building on Queen Street. I was ready to sell it. I mean, why keep banging my head against the wall? That is why it was so encouraging when the government did see the light. One major bookstore, may I point out, did close several years ago. It went out of business. A major article in the Toronto Star attributed its going out of business to the problems it was having with the police because Sunday was its biggest day.

In conclusion, I would like to say that I do not think you are looking at an issue that is all or nothing. The issue really is not wide-open Sundays. Those who care and wish to use the democratic process the way Mr. Levitan and

I did will make their presentations. It will be interesting to see how many people do make their presentations in favour of being open on Sundays.

1450

As far as we were concerned, it was 18 months of intensive work. That is why many of you saw me around here so often. It took that long to get Bill 188 passed. I really feel governments are too cautious to let a domino effect occur. Municipal governments are the same. What I really say is, let the public and merchants resolve the issue themselves and ultimately it will be the marketplace that will really settle it.

Now I would like to introduce Mr. Levitan, the man who really made it possible for bookstores that wished to be open. He is a man I admire tremendously because here is a litigation lawyer who had the courage to say, "Don't litigate," and he put his clients' interests ahead of his financial gains.

Mr. Levitan: I will be rather brief. I would like to talk, if I can, about my experience in the courts and my travels throughout Ontario representing quite a number of retailers and individuals who were charged with violations of the Retail Business Holidays Act. I have been a lawyer for about seven years. Throughout that time, I have travelled to virtually every corner of the province to deal with these charges. The thing that struck me the most over that time was the divergent opinions that various communities had with respect to being open on Sundays.

In some communities in which I appeared, a violator of the Retail Business Holidays Act, according to people I talked to, according to some of the judges who sat, the prosecutors and the police, ought to be tarred and feathered. In other communities, they had a completely different reaction and fines, instead of being prohibitive, were essentially licence fees. The municipalities, as I am sure you have been advised already and you probably already understand to be the case, already govern various aspects of business operations, including store hours and things of that nature. In my view, what the government has proposed is essentially to broaden that aspect of the municipalities' involvement.

All that the prime amendment that has received a good deal of publicity—the tourist exemption local option proposal—really does is deal with the fiction of the tourist exemption, where you have municipalities creating, in quotes, tourist exemptions, to accommodate to a large extent businesses or interest groups in their particular communities.

In my respectful view, what the government has proposed is very good legislation. If communities want to have a more tightly regulated Sunday and holiday, they can effect that. If they want to have a broader Sunday and holiday, they can accommodate that as well. What is the problem with having local communities fine-tune the regulation of business activity in those communities to suit the community needs?

To sum up my submission, based upon my experience in the various communities and courtrooms throughout this province, the only way we are going to accommodate divergent interests in this province on this issue is to let localities decide for themselves. Those are my submissions.

Mr. Chairman: I have Mr. Philip first and then Mrs. Cunningham. We have about four minutes each, regrettably.

Mr. Philip: Mr. Borins, you are saying what a wonderful experience it is now that you are open on Sunday and that there are these great experiences of these sales. Would you agree there may be just a little difference between a sale of Margaret Atwood at your stores, the excitement that would be generated, and the sale of cauliflowers at Loblaws on a Sunday?

Mr. Borins: By all means. That is why I prefaced it, saying I am speaking as a bookseller, definitely.

Mr. Philip: You are not necessarily generalizing to others.

Mr. Borins: Definitely not.

Mr. Philip: You mentioned the reasons you were successful in getting your amendment through. I found it interesting that you did not mention the two reasons that were the real reasons why the committee decided in your favour.

The real reasons were, in the first place, that your employees wanted to work and in fact said, "We, as a trade union, feel that our employer, in this case, is right and we voluntarily, without any coercion, as a group and collectively, take that position." The other argument that actually won over the committee—I was on the committee and was therefore privy to the in camera conversations. There were some members of the committee—who was it that was saying this was going too far? It was Joan somebody or other on the committee.

Mr. Chairman: If it was in camera, I am not sure we should release it.

Mr. Philip: Well, I think some of her statements were also on camera; the hawk of the committee as she was known, a hawk against the loosening of Sunday closing laws.

In any case, the argument that persuaded us was the unfairness that you were really in the recreation game as well as the cultural game, and that if you were going to have video tapes and pornographic magazines available on Sunday, then surely somebody should be able to buy the Bible or a good novel on Sunday, that basically, browsing in a bookstore was a recreational activity. It was those two arguments that actually won over the committee.

I suggest to you that maybe you cannot generalize to other situations. For one thing, other employees and employee groups do not want to work and have said that, and that is quite different from your situation.

Second, not every other—

Mr. Borins: As I said, it is very pleasant to work in a bookstore.

Mr. Philip: The other stores, such as hardware stores, are not in the recreation or cultural business, nor are grocery stores and there may be a distinction. You may want to comment on that. The other thing is that your stores are not in shopping centres, or at least the majority of them were not then.

Mr. Borins: They still are not.

Mr. Philip: Therefore, you still have the option to close or open. As we have heard from so many people, merchants who are in shopping centres

will be under some coercion to remain open whether they wish to or not if this law passes.

Mr. Chairman: Mr. Borins, we may not hear from you because Mr. Philip has occupied the time. Perhaps in responding to other members, you may want to answer.

Mrs. Cunningham: Thank you for appearing today. I enjoyed your presentation. Even though I do not agree with you, I still admire you for coming and presenting your views and giving me the opportunity to ask some questions.

Mr. Borins, do you agree with the concept of a common pause day in your personal life or in any way you want to answer it?

Mr. Borins: I agree with the concept of a common pause day, yes.

Mrs. Cunningham: In your meetings with the courts, the tourist area definition is something that you probably had a lot of discussion about. Mr. Levitan has talked about the fiction of it, but the reality is that someone has to come up with some kind of definition in his own municipality as to who is going to be allowed to open and who is not going to be allowed to open.

Because you are operating in a tourist area now, or were before the more recent legislation that protected you, do you think it is a good idea in the city of Toronto to have certain areas defined as tourist areas for the purpose of Sunday opening?

Mr. Borins: I think it is absolutely necessary. If you look at the résumé, my experience with tourist areas goes back to—I made a mistake in the date—1977.

Mrs. Cunningham: Yes, I was looking at that.

Mr. Borins: It was somewhat of a farce to have Markham Street declared a tourist area, but my main concern was what I emphasize here. I am speaking as a bookseller. I believe in selling books on Sunday and allowing people to buy them. That is the key issue.

The concept of a tourist area is necessary. For example, I see the problem in the Beach store, our newest location. I am just becoming familiar with the area and I see it is full of tourists on Sunday, full of people who are out for a stroll and the merchants want to be open there.

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Mrs. Cunningham: Given your experience, would you be willing to help us in the definition, if we were to be looking at that as one of the aspects of the deliberations of this committee further down the road?

Mr. Borins: I would be happy to. I have certainly had a lot of experience with that.

Mrs. Cunningham: One last question to Mr. Levitan: you talked about the importance of the local municipalities making decisions for themselves because of their own priorities. If we are going with the local option, would you think it would be responsible for us to consider perhaps wiping out the protection for, let us say, drugstores and bookstores, because really if we

are looking at the local option and we are looking at the priorities for each municipality, perhaps all drugstores and all bookstores should not be allowed to be open, given your priority?

Mr. Levitan: I would not be in favour of that. I think the way the government has proposed it is the way to do it, to provide a framework that could be the basis of common standards throughout the province, with an opting-out provision. I would not do what you suggest. I would leave it the way the proposals are drafted now.

Mrs. Cunningham: Just to follow up, you would not agree that the tourist area definition should be part of that framework, in spite of the response of your colleague, Mr. Borins?

Mr. Levitan: No. I would not use the words "tourist exemption" in the new legislation. I would leave it the way it is proposed, namely, to have a local option because if you use a tourist exemption, you will just have the same problem you have now. You might try to fool around with the language of it, but municipalities that will want to get around the Retail Business Holidays Act will use a tourist exemption to accommodate their community needs. Why continue a fiction? Why not allow them to respond to their community interests?

Mrs. Cunningham: But they then would have to define a tourist area, if that was their criterion.

Mr. Levitan: If they themselves want to create criteria that use the words "tourist exemption," that would be up to them, I suppose. I do not know why it would be necessary if they have a blanket local option.

Mr. Keyes: It is a pleasure to see these two gentlemen back before this committee, as I had a fair amount to do with them in the last two years in another guise.

Would you comment a bit further, Mr. Borins, from your knowledge of the the Committee of Ontario Booksellers you are representing, for Toronto or across the province, about the number of bookstores that chose to take advantage of the exemption that was granted? Do you have any knowledge of that, either Toronto-wise or Ontario-wise? You chose to, and led the campaign. I looked at it in my own town. They started being open; then a number of them quickly withdrew.

Mr. Borins: As I say, booksellers are highly individualistic. They might decide to withdraw during the summer and go fishing, then open again in the fall. I really would not want to give any specific percentages or numbers. All I can say is that all the members of the committee at the time we made our presentation who are still in business—some of them went out of business—are now open on Sundays on a regular basis.

Mr. Keyes: You talked about business personally increasing by about 20 per cent as a result of being open. Every year, we anticipate basically a significant increase just due to the improved economics. Could you try to attribute what may have been the actual change, not in dollars and cents, but instead of 20 per cent you will notice as increase. Is it fair to say it may be 50 per cent of that or two thirds of it might be attributed to the time you are open?

Mr. Borins: As I said, we were open most of the time the previous

year on Sundays; it was just very difficult to get across to the public that we were. Looking at it as a retailer, I am just trying to compare apples to apples, as we say. I would say probably two thirds of our increase can be attributed to the passage of Bill 188. It made a very large difference.

Mr. Keyes: I want to give one last question to my partner, Mr. Chiarelli, who has a burning question. I think I have two minutes left.

Mr. Chairman: About a minute and three quarters.

Mr. Chiarelli: Very quickly, Mr. Levitan, you have been counsel on the constitutionality of the Retail Business Holidays Act, and you just indicated that in your opinion the tourism option is a fiction and the definition of it is a fiction. Is it your understanding, as a practising lawyer in the area of constitutional law, and particularly the Retail Business Holidays Act, that there can be no meaningful definition of "tourism option" that does not create significant loopholes or challenges within the law?

Mr. Levitan: Yes. I would agree with that statement.

Mr. Chiarelli: You would say the best option would be the local option.

Mr. Levitan: That is absolutely correct.

Mr. Chiarelli: In that regard, what comment do you have on the domino effect, that municipalities will have to follow other municipalities?

Mr. Levitan: They will not have to follow other municipalities. They will if they want to. If they do not, they will not. I have been following this issue for a long time now and have been heavily involved in it. People may decide to be open, and then ultimately, because of the marketplace or other pressures, decide to close up. I do not think you will have an apocalypse if there is a local option and I do not think you will have a domino effect. I frankly think there will be very little change in Ontario as a result of these amendments.

Mr. Chairman: Thank you very much. I appreciate your coming forward and taking time out of your busy schedule to give the information you have.

Mr. Levitan: Thank you.

Mr. Chairman: We have already been advised that the three o'clock appointment has been cancelled. That does not mean we are going to deviate in any way, shape or form. We will call the next group, the Canadian Lord's Day Association, with Malcolm MacInnes, Donald Fraser, Jerry Hamstra and Fred Jonkman. Perhaps you gentlemen would have a seat and the main presenter would identify the people to his left and right for Hansard. If you have not heard, you have 30 minutes for your brief. You can use all or part of it. We would appreciate it if you would leave time for the members of the committee to ask some questions. Please proceed.

THE CANADIAN LORD'S DAY ASSOCIATION

Mr. MacInnes: Thank you for this opportunity. This is Donald Fraser. I am Reverend Malcolm MacInnes. This is Reverend Jerry Hamstra, and Fred Jonkman.

You have a copy of our brief and we propose to present one section each. I will do the first part. After the cover page, you have the summary, which we will skip at the moment and come to later.

Page 1 is a statement of who we are. The Canadian Lord's Day Association is a Canada-wide association of people who decide to uphold the sanctity of the Lord's Day, also called the Christian Sabbath or Sunday. We have members from many different denominations from many areas of Ontario and across Canada.

Then we have our aims. This is drawn from our basis of constitution:

"1. To uphold the sanctity of the Lord's Day upon the basis of the scriptural declaration that one day in seven was blessed and hallowed by God during man's innocence, became enshrined in the 10 commandments, confirmed throughout the Old Testament, observed as the first day of the week to commemorate Christ's resurrection from the dead and since called the Lord's Day with divine authority and of perpetual obligation;

"2. To educate public opinion and organize Christian effort towards promoting the aforementioned purpose of preserving the sanctity of the Lord's Day and towards securing regular family attendance at the public worship of God throughout that holy day;

"3. To promote and uphold the beliefs set forth in the basis of constitution, namely, belief in the triune God, the essential deity of the Lord Jesus Christ, His incarnation and virgin birth, the truthfulness of all His words, His atoning vicarious death upon Calvary for sin, His bodily resurrection, ascension and coming again, in the whole Bible as the inspired word of God, and in the divine authority and perpetual obligation of the Christian Sabbath or Lord's Day."

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Now, you may wonder why we are interested in Bill 113 and Bill 114. Our interest in Bill 113 and Bill 114 is derived from our belief that the ultimate basis for determining what is right or wrong was established by the authority of God in the moral law, which is summarized for us in the 10 commandments, so this part of our submission is concerned with authority.

As I proceed, this may sound like a sermon, but if you will follow, I hope you will get the point and see why we have raised the issue. When Jesus was asked which was the greatest commandment in the law, He answered: "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind, and with all thy strength: this is the first and the great commandment. And the second is like it, namely this, thou shalt love thy neighbour as thyself."

We submit that neither Bill 113 nor Bill 114 was drawn up with this basis. The presentation of these bills, therefore, to the provincial parliament suggests that man can pass laws which are contrary to God's law. To ignore God's law is to show a lack of love for our neighbour by ignoring the

needs of our neighbour's soul. Jesus spoke the words, "For what shall it profit a man if he shall gain the whole world and lose his own soul?"

The next part of our submission proceeds to show that Jesus Christ, who is the Lord—the Lord's Day is called so in virtue of His resurrection on the first day of the week—is a unique person. He fulfilled exact prophecies, was born of a virgin, lived a perfect, sinless life, gave his life to save others, rose from the dead after three days, ascended to heaven 40 days later and sent down the Holy Spirit. The Bible tells us there is no other God, no other son, no other way of salvation and no other mediator between God and man.

We believe that Sunday or the Lord's Day has to do with Jesus Christ. It is the Lord's Day because He is special or unique, so the Lord's Day is unique. According to reports, even Paul Madger told your committee yesterday that he would pay time and a half because the day was significant. He ought to consider why the day is significant.

Christianity has been revealed by God and is a unique religion. God's word, the Bible, is to be our final authority. This truth is stated plainly in Romans, chapter 13, verse 1. This is what concerns you as parliamentarians: "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God."

As legislators, the members of your committee and other parliamentarians at Queen's Park are appointed by God to rule. Not only are you accountable to your constituents, but of much greater importance, you are accountable to God. Your authority to rule is ultimately from Him.

In his St. Cuthbert lecture, Lord Mackay of Clashfern, the present Lord Chancellor in Britain, stated that two forms of authority co-exist: the authority of Her Majesty to rule and administer justice—I will just remind you that this committee is called the standing committee on administration of justice—derived from God and the authority of the Church to rule in matters spiritual derived from God. "the authority for each flowing ultimately from the same divine source."

We have a quotation from the statement of the Lord Chancellor of Britain. He continued his lecture with this statement:

"When Parliament is seen to be doing something which I know to be right, it has, for me an authority much greater, more compelling than is accorded merely by the fact that I, along with many others, voted those MPs into the House. This is, I believe, the authority referred to that Jesus possessed as distinct from the scribes. His pronouncements carried with them a conviction of their truth in the minds of the hearers. This above all is the authority we need today."

"When we cast off the authority of God we cast off with it all human authority. In so far as we are able to pursue that policy we create utter disorder in the society in which we live.

"When we are reconciled to God through Christ, His law will become a law of liberty to us to serve Him truly, heartily, always. There will be perfect freedom and among the many activities that we shall be called upon to perform is that, 'To pray for kings and for all who are in authority that we may lead a quiet and peaceable life in all godliness and honesty.'"

Bill 113 and Bill 114 are attempts to legislate contrary to the word of God and are therefore without authority.

Finally, Jesus said, "If you love me, keep my commandments." The fourth commandment, which requires that one day in seven be observed for religious purposes, is one of these. Jesus also said that He is lord of the Sabbath and that the Sabbath was made for man, not man for the Sabbath. It was made for the good of man, to be a blessing to him, thus demonstrating God's love for man. It was made for man, all mankind, not just for Jews or Christians. Before there were Jewish or Christian religions as such, one day in seven was significant.

Now, Fred Jonkman will proceed with the historical facts.

Mr. Jonkman: I would like to continue with some historical facts.

The principle of the observance of one day in seven as a day of rest has its origin in God at the time of creation. Man was told to keep this day holy before the 10 commandments were given. When the biblical argument is unacceptable, the historical argument may convince. Throughout history, people have tried to ignore this day and have failed. Attempts have been made to change the one-day-in-seven rhythm, either by cancelling the day of rest altogether or by lengthening the work week.

Read here a quote from J. R. W. Stott in his booklet Issues Facing Christians Today:

"For example, the French revolutionaries, after abolishing the monarchy and setting up the republic in 1792, introduced a new republican calendar with a 10-day week. But the experiment survived only a few years. People could not last nine days without a break. So in 1805, Napoleon restored the seven-day week. Something similar happened after the Russian revolution a century later. In sweeping away religious institutions, the revolutionary leaders turned Sunday into a working day. But again it did not last, and Stalin himself restored Sunday as a day of rest."

The key to the question of Sunday observance as a special day lies in the name "the Lord's Day." Sunday is the Lord's day. It is a religious day, a weekly reminder of the resurrection of the Lord Jesus Christ from death.

Furthermore, in spite of attempts by the government and the courts to deny it, this is a religious issue. This cannot be ignored. The history of Sunday is a religious history. Your committee is dealing with a religious issue. Call it whatever name you choose, it remains religious.

Bill 113, An Act to amend the Retail Business Holidays Act, states what is meant by the term "holiday." Included in the list of days is Good Friday, Thanksgiving Day, Christmas Day and Sunday. These are days with religious significance. To deny this is to fly in the face of facts which are well established and recognized throughout the centuries.

We assert that this is a religious issue. Not only does Sunday have a history, but so also does Sunday work, as shown in the two examples quoted above.

The government is concerned with presenting a law which is just and good. There is a perfect law already existing and it remains with the government to apply it to the situation. It is the law of love, to which

reference has been made earlier, the law which recognizes and addresses the people's needs at every level, both with respect to God and to man's neighbour.

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We believe that the fourth commandment, which requires the observance of one day in seven for religious purposes, occupies a significant place in moral law. The first three commandments refer specifically to man's relation to God, and the fourth addresses man's use of the time which God gives him. There are 10 commandments in the moral law and the remaining six deal with man's duty towards man.

Use properly the time which God gives you to relate specifically to him and you will be better equipped to relate properly to your neighbour. In other words, recognize the authority of the first set of four commandments and you will realize that the second set of six commandments is of great social value. This is not only solid biblical teaching for the basis of morality, it is also the foundation for a sound sociology.

We submit to your committee for its consideration that in this basic truth lies the answer to many of the problems facing society and the Queen's Park Legislature.

The issue before us is also more than this, for it is more than family life. There has been considerable emphasis on the fact that wide-open Sunday shopping will be detrimental to family life. We believe this is true, but we think there is a more important dimension for you to consider. Sunday is not intended to be merely a family day for social activities. It is a day for individuals and families to seek spiritual life and renewal through divine worship, except for as much time as is to be taken up with works of necessity and mercy.

As parliamentarians, you and other members of the Legislature have to consider your responsibility under God to uphold his laws. You cannot compel your constituents to attend church or to worship God, but you can take steps to ensure that their work does not unnecessarily prevent them from engaging in divine worship.

If you follow the proposals as outlined in Bill 113, you will put further obstacles in the way of your constituents and they are less likely to be free from secular employment and free to attend to their spiritual needs. To place those who have voted you into office in positions where they will be under pressure to work on Sundays, may be denied promotion and perhaps even face unemployment because they do not wish to work on Sundays cannot be interpreted as care and love for them.

To say that Bill 114, An Act to amend the Employment Standards Act, will prevent discrimination against employees who do not wish to work on Sundays is somewhat naïve. As politicians, you know very well that employers can find ways around the laws and the supposed safeguards in Bill 114.

Mr. Fraser: We want to highlight some of the practical considerations that are raised in these laws. We would like to draw your attention to the following practical considerations.

First, if Bill 114 becomes law, we would like to ask who will be qualified to determine whether the disputed Sunday work assignment is

unreasonable. "Unreasonable" is a word used very much by lawyers and it is very broad and open to very many questions.

Second, if Bill 113 and Bill 114 are passed, they will inevitably lead to wide-open Sunday shopping. I have a note here, "See the vulnerability of the retail employer." Those are facts that were brought up in the case of Paul Magder. It was stated that the vigorous competition for market share would force many retailers to be open.

Third, the inconsistencies created between different municipalities and even within a municipality cannot be called just and good. Discrimination is a distinct possibility. The municipalities could make laws that could create a situation similar to the case of Paul Magder, where one side of the street is closed and the other side of the street is open within a municipality. So I do not think passing it over to the municipalities is necessarily going to answer this problem.

A similar situation, I would suggest, also could occur in Metropolitan Toronto where we have the example of the mayor of North York being greatly for Sunday opening and the mayor of Scarborough being vehemently opposed to it. Those are two municipalities right beside each other where there are diametrically opposed opinions.

Fourth, we suggest these bills are not good for the government, because employees who are forced to work will have a constant reminder that it was this government that upset their lives.

Here are some of the recommendations we would make regarding Bill 113 and Bill 114.

Generally, we would suggest that you not pass Bill 113. We believe the present Retail Business Holidays Act has been declared valid by the Supreme Court. We believe the basic power of legislation on this matter must remain a provincial responsibility. The proposed legislation further adds to the chaos by adding several variables which will be open for debate upon attempted enforcement.

Second, we would propose that you do not pass Bill 114. We object to the lack of reference to God's law or acknowledgement of His absolute authority.

Through the use of the term "unreasonable," a large area of uncertainty is exposed, the definition of which is ultimately left to the whims of the various employment standards officers. This legislation will also create a whole new workload which the present number of employment standards officers could not handle.

Some of the details we would like to specifically address are:

Bill 113, subsection 3(1): We suggest this still allows many drugstores which meet the area requirements to open for business. It does not restrict the retailer so as to produce the intended result.

Bill 113, subsection 4(1): We disagree with this subsection, as passing the power of legislation to a multitude of municipalities adds chaos to an already complex situation.

Bill 113, subsection 5(1): We believe this is not uniform legislation. We assert that God has set aside one day for rest and worship. Before the

resurrection of Jesus Christ, it was the seventh day, and since that time it has been the first day of the week. God's word makes no provision for some other day at the mere choice of men.

Bill 113, subsection 7(6): We believe this is promoting the continuation of the problem of roping off for the period of one year. We disagree with the addition of this subsection.

Bill 114, subsection 39i(1) and subsection 39k(2): The only protection for refusal to work on Sunday is based on unreasonableness. We believe there is no absolute here. The omission from the legislation of refusal based on religion leaves in doubt the reasonableness of such a defence.

Bill 114, subsection 39i(2): We disagree with the proposal that the final determination of reasonableness be placed in the hands of a referee.

I would like to pass it over to Jerry Hamstra.

Mr. Hamstra: I would like to make a few comments on the present legislation.

We agree that the present legislation is not perfect. There are inequalities. Certain stores are allowed to sell products which other stores are not allowed to sell. For instance, common goods are available in drugstores which should be providing only prescription drugs and medicines on Sunday. Other stores are not allowed to be open and sell these same goods.

We agree that prescription drugs and medicine should be available on Sunday under the provisions of necessity and mercy, but feel that because common goods are also available, a situation of chaos exists which makes a mockery of the existing laws. If these common goods were not available on the Lord's Day, people would learn to schedule the purchase of them during the other days of the week, just as people are now trained to use certain government services which are available only five days a week during those five days only.

1530

So there are problems with the present legislation, but even in its present form it is better than what is proposed in Bill 113 and Bill 114. We submit to your committee that rather than passing Bill 113, the Legislature should recognize that society does need a common pause day and take steps to ensure that the present Retail Business Holidays Act be more consistent with the absolutes of God's perfect law and with common sense. Rather than take the retrograde step of passing Bills 113 and 114, the Legislature should recognize the importance of a common pause day to the individual, to family life and to society as a whole.

The practice of Sunday observance is ancient and universal, and it would be the wisdom of your committee to recommend to parliament that this practice be maintained.

You have had famous and well-informed predecessors. We recommend that you follow their views on this issue, as expressed in the statements by them in letters sent to the Lord's Day Alliance of Canada in 1930 to mark its 40th anniversary.

From the Right Honourable William Lyon Mackenzie King, then Prime Minister:

"I am pleased to avail myself of the opportunity afforded by the celebration by the Lord's Day Alliance of Canada of 40 years of service to extend best of wishes for the work of the alliance in days that lie ahead. Apart entirely from the spirit of reverence by which it was inspired and which it serves to inspire, the observance of one day in seven as a day of rest has been recognized throughout the ages as an essential element of the physical and spiritual wellbeing of mankind. I believe it to be in the highest national interest to preserve in its integrity an institution which has already contributed in such large measure to the upbuilding of character and to the progress and happiness of the Canadian people."

From the Honourable G. Howard Ferguson, then Premier of Ontario:

"It is being recognized more and more that the day of rest, which we owe to our common Christianity, is one of the greatest blessings enjoyed by the civilized world. The rush of modern life would be much more destructive were it not for the spiritual, mental and physical refreshment that every week brings, or ought to bring, to humanity. I hope the time will come when all religions and races will set apart the same day of the week for this sacred purpose and that the observance of the day of rest will be perpetuated for all time in accordance with our highest and best ideals."

Finally, from Sir Robert A. Falconer, then president of the University of Toronto:

"While I recognize that a great change has come over public opinion in my lifetime in regard to the observance of Sunday, I should hope that, for the sake of the national wellbeing, the day will never become the same as any other day of the week. More and more people will demand that they shall have the freedom to observe the day as they will. At the same time, it would be, in my judgement, a calamity to the public at large should it cease to be recognized in general as a day on which public worship may be conducted without too much distraction from everyday occupations."

I would just like to go over the summary to put this all in perspective.

The ultimate basis for determining what is right or wrong was established by the authority of God in the moral law. Therefore, legislators are accountable to God, who has given them authority to rule according to his word. Bill 113 and Bill 114 are attempts to legislate contrary to the word of God and therefore are without authority.

Historically, the French introduced a new calendar with a 10-day week but the experiment survived for only a few years. In 1805 Napoleon restored it to seven days. In the Russian Revolution, the leaders turned Sunday into a working day but, again, the experiment did not last and Stalin restored Sunday as a day of rest.

Most churches have failed to explain that the real significance of Sunday is the commemoration of the resurrection of Jesus from the dead. Family life is important, but Sunday is essentially a day of worship.

Practically, we must consider one who is qualified to determine whether the disputed Sunday work assignment is unreasonable. Second, if passed, Bill 113 and Bill 114 will inevitably lead to wide-open Sunday shopping. Third,

discrimination is a distinct possibility. Fourth, employees forced to work will remember this government as the culprit.

We recommend, therefore, that Bill 113 and Bill 114 be scrapped and that the present Retail Business Holidays Act be more consistent with the absolutes of God's perfect law.

We thank your committee for hearing our brief and we hope that you have found it helpful.

Mr. Chairman: Thank you for a very extensive brief. Unfortunately, the 30 minutes have been occupied. For that reason, I do not believe we have time for any questions from members. But I think your brief was full and very clear. We appreciate your taking the time to come here and, in a very sensitive way, to address us.

The next group to appear before us, as a result of one group not coming, was scheduled for four o'clock. I am not certain they are here. Hy and Zel's, the supermarket drugstore.

Mr. Himmel: One of us is here.

Mr. Chairman: Come forward, please.

Mr. Himmel: Can you wait until 4 p.m.? Mr. Goldstein was going to do the address. He is on his way. We left the office together.

Mr. Chairman: We can wait.

Mr. Himmel: Is there no one on at 3:30 p.m.?

Mr. Chairman: We will certainly wait for him.

Mr. Himmel: Here he is.

Mr. Chairman: Gentlemen, please have a seat and identify yourselves.

Mr. Goldstein: I must apologize for being early—late, I guess.

Mr. Chairman: You are not late; we are ahead of time, that is all. You should identify yourselves for purposes of Hansard. For the person who is presenting, you can use all or part of the 30 minutes that we are allowed to allot you because of the numbers of people we are trying to hear.

For your presentation, it would be preferable if you left some time for members of the committee to be able to ask questions.

Interjection.

Mr. Chairman: I am sorry. I must be talking in my beard. Maybe I should get closer to the microphone. What part did you not hear? I want to find out if you want the whole thing over again.

You have 30 minutes. We have been required to allocate 30 minutes because of the numbers of people who wish to appear before us. You can use all or any part of the 30 minutes for your presentation, but it would be more

desirable if you left part of that time for questions from members of the committee.

Mr. Goldstein: I have prepared here, I would say, about a 10-minute discussion. At that point, I would be open for any questions.

Mr. Chairman: Fine. If you would like to identify yourself and the gentleman with you for purposes of Hansard, you can proceed with the presentation.

1540

HY AND ZEL'S

Mr. Goldstein: The gentleman to my left is my partner, Hy Himmel. My name is Zel Goldstein. We are the co-founders of Hy and Zel's.

I am the president and co-founder of Hy and Zel's, a duly accredited pharmacy under part IV of the Health Disciplines Act, as required by subsection 3(2) of the Retail Business Holidays Act. Our problem is that we employ more than four people. As you know, there are no square-footage restrictions for drugstores under the Retail Business Holidays Act. While our stores are large and sell a wide variety of goods, 75 per cent of our business is done with normal drugstore merchandise. If it were not for our pharmacies, we would not be in business today.

Notwithstanding that, we opened for business in June 1980. We were not charged under the Retail Business Holidays Act until December 1985. For approximately five years, we carried on business in an open and obvious manner without any problems from the authorities. Both our customers and the authorities saw us as a modern drugstore and saw no problems with our carrying on business on Sundays. As a result we set up our bank financing, cash flow projections, etc., and then after five years the authorities came along and told us we would have to close.

It was impossible for us to comply with the four-employee requirement. When we tried, our customers became infuriated, abandoning shopping carts due to the long lineups, and were generally unhappy. In addition, there was a tremendous safety factor involved. The pharmacist alone required two assistants. To cut back could result in the dispensing of wrong drugs. Cashiers are required, as well as stock personnel to clear away shopping carts in the store and in the parking lots and to assist senior citizens with their parcels.

We concede that the issue of Sunday shopping is an issue upon which reasonable people can have a difference of opinion. However, we have now reached a crossroads and the question is whether we move forward or take a large step backward. We are a business. As all business people do, we wish to earn money. We create economic activity and jobs.

We find it quite hypocritical for opponents of Sunday shopping to accuse us of being interested in money, money, money, when they have little difficulty with the idea that car manufacturers, for example, have the right to carry on business seven days a week, 24 hours a day, on a shift-work formula. There is no difference between General Motors earning money and Hy and Zel's earning money. I think there is quite a difference, though, in the earnings. We are both businesses.

Mr. Pelissero: Do you make more than they do?

Mr. Goldstein: Not quite.

Mr. Chiarelli: Prove it.

Mr. Goldstein: There are no rational distinctions between allowing the manufacturing sector, as an example, to employ as many workers as it wants on Sundays yet restricting us to only four. If your concern is that working on Sunday is destructive to the family and to our social and moral fabric, then to be consistent, you would have to close everyone down except perhaps for essential services. You cannot say that the fact that Hy and Zel's employs workers on Sunday is detrimental to those employees and therefore requires the full sanction of the law to close us down, while allowing workers to work in tourist-designated areas or in any other area where the Retail Business Holidays Act carves out exemptions or in those areas that are not even covered by the act.

We simply cannot understand why our company should be penalized for running a competent business with satisfied customers and employees. If we were closed on Sunday, our pharmacy business would suffer greatly because when our customers need their medication, they are not going to wait a day when they can go to one of our competitors and pick up their prescriptions.

We have no difficulty in finding part-time people to work on Sundays. In fact, it is the easiest day of all. No employee in our store works six days a week, let alone seven. Management has never applied pressure, whether overt or subtle. We invite any of you to come to our store, speak to our employees and ask them about working conditions in our store, whether we employ any form of pressure on them or whether they feel any subtle pressure being imposed on them.

We have built our company in the spirit of goodwill and fairness and we have an excellent relationship with our employees. We treat them fairly; we care about them and I think they care about us. We would never consider forcing any of our employees to do anything against their free will. We are a service industry, and if you have an unhappy employee, you will have unhappy customers and a poor business.

We have never done anything in contravention of the Employment Standards Act and we would have no problems if the government attempted to tighten up labour protection legislation as it is now proposing.

The argument that Sunday shopping will be damaging to the family is utter nonsense. The Goldfarb study showed that 91 per cent of Ontario residents do not believe Sunday shopping would have a negative impact on family life.

Even if there has been some shift in public opinion, it has only been a few points. The fact of the matter is that an overall majority of Ontario residents do not buy this argument. If it were true, you would have no alternative but to close everything down, including the ballparks, the restaurants, the theatres and the manufacturing plants, as well as eliminate every single exemption under the act.

With respect to the exploitation of workers, we can only say that there is an unfounded allegation which plays on the emotions and fears of the legislators. It assumes that the majority of employers are bad people and is

the identical fear tactic used, along with the destruction of family, when we brought Sunday sports and entertainment to Toronto. It was false then and it is false now.

If you think we, as employers, will use subtle methods of coercion on our employees, then you must conclude that employers do exactly the same thing in all other sectors of the economy as well as those areas of retail that are exempt, such as 170,000 restaurant and hotel workers who are eligible for Sunday work in Ontario right now.

You cannot suck and blow. You must be consistent. You either close everyone down on Sunday or you allow everyone to be open with proper labour protection legislation.

At our trial, the proceedings which are now before the Ontario Court of Appeal for hearing in the fall, our liar—I am sorry.

Mr. Chairman: I beg your pardon.

Mr. Pelissero: The chairman is a lawyer.

Mr. Chairman: That really created a pause, did it not? Go ahead.

Mr. Goldstein: Our lawyer called a number of our employees. We were prepared to call every single one of our employees. However, because of time restrictions, the court, with the consent of the crown, agreed that we should only call a couple of employee representative of all the employees, acknowledging that if we called all our employees, they would all say the same thing.

One employee we called, who was typical of our employees, was a young girl by the name of Penny Norgren, a 17-year-old, grade 12 student at Newtonbrook Secondary School in North York. She told the court that she enjoys working on Sunday because she does not normally have anything to do and it provides an opportunity to earn extra money. She stated that her father is a single parent and she has two younger sisters and her father cannot afford to give her extra money.

She testified that she was offended that other people were prepared to impose their values on her and to suggest to her that she was not working freely. She testified that she was working voluntarily and that she enjoyed working on Sunday rather than on any other day of the week because it is a family day and is a nicer atmosphere within the store.

This young 17-year-old was offended at the suggestion that retail workers required special protection because they tended to be women who were low-skilled, nonunionized, poorly educated and unable to protect themselves. In fact, all the employees who were called at our trial found such a statement to be offensive, male chauvinistic, sexist and out of date.

We should not forget that it was only a short time ago when the unions attempted to organize the retail employees at Eaton's and that the majority of the employees were women, who overwhelmingly threw the union out.

We have no problems with unions and they obviously are a very important and constructive force within our society. However, only one third of the Canadian workforce is unionized and it would be offensive to suggest that the other two thirds of the workforce are ignoramuses because they are not

unionized. This is a democratic society and for the unions to suggest that only they can protect workers is, with respect, self-serving.

People who shop in our store on Sunday use it as a special outing. They do not come back during the week. Sunday is a special shopping day. If we were forced to close on Sunday, we should have very serious financial problems and no doubt would have to lay off a good number of employees.

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You should also keep in mind, when you are determining the legitimacy of the present legislation, that while the courts have found the legislation to be valid, they have done so only after finding that there was a very serious charter violation, both with respect to religious freedom and equality rights.

You cannot make light of this fact without making a mockery of the charter. If the courts are prepared to find a violation of religious freedom and equality rights, that is a very serious matter. The fact that the courts have found that infringement to be justifiable as a reasonable limit is another matter which is open for debate. However, it does not eliminate the fact that there has been a substantive violation of the charter.

In summary, we obviously support wide-open Sunday shopping. We know that our customers and our employees want it. We believe that the opposition is using arguments based on fear, as it did in the 1950s and 1960s. Those fears did not materialize in western Canada. The fears of the workers and families that came within the exemptions under the present law in Ontario did not materialize. Those fears did not materialize in the United States and Sweden. The greatest fear that opponents of Sunday shopping have is the truth.

That is the end of my submission or the notes that I have, but I want to add something else. This comes more from my gut than anywhere else. Hy and I started this business back in 1980. We begged, borrowed and stole—well, I would not say we literally stole money—to go into business. We put up everything that we had as collateral to the bank to get the credit we needed to go into this particular business.

We never had a problem until 1985, and then somebody came along and said, "Hey, you can't open up." Yet they told other drugstores that they could open up. Why can't we open up? Because we have more than four people. To have more than four people means that maybe we are doing something right; maybe we are busy. You must serve the customers. You must be able to help them. It is almost impossible to serve people with less than four employees in this day and age.

The retailing drugstore has changed so much over the years. From the Tamblins-type store in the 1950s and 1960s, we had a change to the Shoppers Drug Mart in the 1970s. What that did was literally put the small pharmacist out of business, because they came in with their wide-open aisles and their self-serve type of store. Now, in the 1980s, we have come up with another advanced type of merchandising that has probably made what was done in the 1970s passé.

But you must leave room for advancement; you must be able to advance your methods; you must be able to advance your retailing. You cannot possibly think that a drugstore of the 1940s is the same as a drugstore of the 1980s and the 1990s. More and more retailers are trying to put products in their

stores to get additional sales to cover rents, wages and all the additional costs that are creeping up on them.

If we were forced to close on Sundays, we would have a very, very serious problem. Everything that we worked for, everything that we have would be literally put on the line. We are not the only ones. There are probably others in the same boat.

I would be in favour, and I think Hy would too, of closing all drugstores on Sundays. Either close them all or open them all, but do not try to sit in judgement as to who should open and who should close.

I want to thank you very much, and if there are any questions, I would be very happy to answer them.

Mr. Chairman: Fine, thank you. We have about 15 minutes left, so we will allocate five minutes. Mr. Philip is the first.

Mr. Philip: In your brief you mention a number of things. You did not mention whether you are in favour of or against this bill. Do I take it that you are endorsing the bill?

Mr. Goldstein: We are not particularly endorsing the bill, no, because, as far as I know, the bill limits a drugstore to 5,000 feet. In other words, again they are sort of choosing certain drugstores to open and they are telling other drugstores to close. I am saying that, for the drugstore of the 1980s and 1990s, literally this would close down 95 per cent of the drugstores in Ontario.

Mr. Philip: I would like to deal with the 5,000 square feet in a minute, but are you aware that this bill goes further than that; that this bill, in fact, gives the municipality the right to close a drugstore on Sunday for any reason it chooses? It may choose to close all the city of Toronto, or the city of Metropolitan Toronto could decide to close all drugstores south of Bloor Street if it so wished.

It could decide to close all stores that are under 5,000 square feet; it could decide to close all stores that are under 2,000 square feet. In fact, all it is doing is transferring to the municipalities the very kinds of things that many people have complained about as being arbitrary under the tourist exemption, except that is making it wide open. They can close you down for any reason.

Mr. Goldstein: I am aware of that. Any change in a retailing concept—in other words, if you are open 365 days a year or, instead of just talking off the top of my head, if you were open for that period and all of a sudden you had to close for any particular reason, anything that you had gained over that period of time you would lose. In other words, any change now in our hours, our retailing methods or anything would hurt us substantially.

Mr. Philip: The representatives of Shoppers Drug Mart and I have met; there are five in my riding. They make the argument that to operate a successful drugstore, you can operate at 7,500 square feet. There may be an odd few—there are some in London, for example—that are 10,000 square feet, and many of them I know are not grocery stores disguised as drugstores but are legitimate drugstores, and they just happen to have a 7,500-square-foot limit. On the other hand, the merchants who sell groceries have complained about Herbie's and other outfits like it that are 15,000 or 20,000 square feet and

that, in fact, are simply grocery stores that have a drugstore in the corner, so to speak.

May I ask what the square footage is at the present time in your store?

Mr. Goldstein: Our square footage is 30,000 to 35,000 square feet. But you have got to understand that the reason Shoppers is coming in at 7,500 square feet is that it would allow it to open up 80 or 90 per cent of its stores.

You have got a situation here where everyone is looking out for himself. If you want to close up the drugstores, I have no beefs, but close everybody. Do not pick on certain people who are going to suffer, and do not then all of a sudden say, "Hey, maybe 5,000 feet is wrong and it should be 7,500," and all of a sudden Shoppers is in the clear again. Shoppers started this whole thing, and now all of a sudden they are in jeopardy. Because of the advancement of retailing methods in the drug industry, they are losing a lot of their business, and now they see a way that, by closing up our type of drugstore, they can get back.

Mr. Philip: May I quote you back to you the words of someone else who made a statement similar to yours? That is: "We have heard from the grocery chains if you want to close down all the grocery chains on Sunday, close them down, but do not let a grocery chain open up disguised as a drugstore."

I ask you, sir, in your own case—because I have not been in your store, so I do not have any advance knowledge—if I were to go into your drugstore, could I buy ham? Could I buy packaged meats? Could I buy delicatessen products, for example? Could I buy milk in your drugstore at the present time?

1600

Mr. Goldstein: Yes, you could, but that is only the advancement of the type of drug retailing that is going on today. Shoppers and Boots have not advanced with this type of retailing method. What they are doing basically is they are trying to go against the ones that have advanced to that particular position. I challenge you or anyone else on this committee here to tell us that we are not a drugstore. We sell other things, the same as Shoppers does, but we are a drugstore. We have been in the drug business for 25 years. There is a difference between a drugstore selling groceries and a supermarket opening up a dispensary within a supermarket. That is not the case.

Mr. Chairman: Mr. Philip, we are going to have to move on to Mrs. Cunningham here.

Mrs. Cunningham: Welcome. You have such a terrible reputation preceding you and I am so happy to see such amiable people with good personalities and a sense of humour.

Mr. Goldstein: My kids like me too. Thank you.

Mr. Keyes: He had heard the same thing about the committee.

Interjections.

Mrs. Cunningham: I thought they did. You are the big bad guys of this legislation. Now you are big, but I do not think you are bad.

Mr. Goldstein: No, we are not the bad guys.

Mrs. Cunningham: That is right.

Mr. Goldstein: We just spoiled everything for you.

Mrs. Cunningham: That is right. You sure did. You have mucked it all up. I happen to agree with your observations of the 7,500 square feet. I happen to agree with your observation that drugstores should be open. I will ask you a question though with regards to the very beginning of this adventure for yourselves and that was, when you first opened as a drugstore, were you aware of the four-employee restriction?

Mr. Goldstein: To be honest with you, no. I was not aware.

Mr. Himmel: It was not in force for five years.

Mrs. Cunningham: It sort of came to your attention somewhere along the line, that kind of thing.

Mr. Goldstein: Yes. By that time, we were so deep and so involved in this thing, that any change to anything would have been suicide. The big problem is, you know, like everyone tries to tell you that if you do not come on Sunday, people will come Monday through Saturday. That literally is not the case. You lose all your business. They do not come any other day of the week. Sunday is a very special day for a lot of people. It is a day when they can pack their kids and their wife and go for a drive. While they are doing all their things and visiting family or whatever, they can pop into Hy & Zel's, Herbie's, Howie's or wherever they want to go and drop in and pick up some stuff. Now this is something that they would not do any other day of the week. They just do not have the time or the chance.

Mrs. Cunningham: Someone asked me how I would define a drugstore and I said, "A drugstore does not sell lettuce." Do you sell lettuce?

Mr. Goldstein: No, we do not.

Mr. Himmel: We have ketchup.

Mr. Goldstein: We got you on that one.

Interjections.

Mr. Keyes: Careful.

Mrs. Cunningham: You will like me if I stay with my definition of a drugstore then.

Mr. Philip: Typical Tory research.

Mrs. Cunningham: No research, just me. No research.

Mr. Himmel: Incidentally, we do not sell meat or produce.

Mrs. Cunningham: I was going to ask you what you do sell that other people would consider—

Mr. Himmel: The same as a convenience store would sell. Probably even less. We sell dairy products, freezer products, milk, bread, some deli products that are prepackaged. We do not have people cutting meat. We do not have fresh produce in our stores. We are not like a supermarket.

Mr. Jackson: Do you have any plans to do that?

Mr. Himmel: No, definitely not. We are what we are. Like, we are very innovative. We started this and everybody is running and either copying us or trying to kill us. That is what has happened.

Mrs. Cunningham: Interestingly enough, the convenience store down the street from me does sell lettuce and tomatoes in the cooler, along with the milk, but that is just an observation.

I have three questions as part of my little survey here. Are you in favour of a common pause day?

Mr. Goldstein: It is not a fair question because we just do not have it today. We do not have a common pause day. What I am in favour of, and I think I have said this before, I am in favour of closing all drugstores on Sunday, Shoppers, Boots, all of us. I am not in favour of anyone picking out a Hy & Zel's, Herbie's or Howie's, and saying, "Hey. You are too big. You have to close," but someone else can open up. I think that is getting back to where we started from. Discrimination and picking on certain type stores that should not be picked on. I do not think we are in a position to try to judge who should be open and who should be closed.

Mrs. Cunningham: Are you in favour of the local municipal option as put forth in this legislation; in other words the municipality making the decision as opposed to the province?

Mr. Himmel: I think what they are doing is turning things around. I think the concept of the whole idea of the bill is whether they are going to allow stores to open on Sunday. To say that they are going to turn around and close everybody down I think is a little bit farfetched.

Mrs. Cunningham: The reality is someone is going to make the decision.

Mr. Himmel: Yes, it is true. It is true.

Mrs. Cunningham: Either the province will make the decision or, under this bill, the municipality will make the decision. I had the same problem with a couple of other witnesses yesterday, who eventually answered the questions. I mean you must have thought about this.

Mr. Himmel: Right.

Mrs. Cunningham: In fact, your only hope probably would be that the municipality make the decision. That would have been my expectation on your answer, given the legislation, because the province has come down and said that great big drugstores are not going to be open. If you heard the Solicitor

General, you do not have a hope. Now I am not in favour of this legislation, but if I were you, I might be in favour of the municipal option.

Mr. Chairman: I am not sure about that.

Mr. Keyes: You are leading the witness. Is that what it is called?

Mr. Philip: And without counsel.

Mr. Chairman: My recollection of the Solicitor General's comments, to be fair, was that was something this committee may want to look at, if that is—

Mrs. Cunningham: Oh, the size. Yes.

Mr. Chairman: Yes.

Mrs. Cunningham: We talked about 7,500 square feet. I will be pushing hard, if we have to stay with square feet, for 10,000 square feet, but that is not going to help these people. In reality—

Mr. Chairman: I was just correcting the statement—

Mrs. Cunningham: She was very much against roping off and very much against large drugstores who charade, as she put it, as grocery stores. It has already been put that way.

My last question for my little survey has to do with whether or not you think—I guess I have already asked all three of you really. You are going to say no to the last one as well. Do you have a question?

Mr. Chairman: I think you have and I think the time is—however, since I interjected, which I should not have, I will allow you to ask a very—

Mrs. Cunningham: And since I did not ask my third question—

Mr. Jackson: A very brief supplementary. Your legal counsel presented to us earlier today. He presented as an individual. The time expired and I had to ask him several questions away from the proceedings. I asked him a question, but worded it differently than my colleague Mrs. Cunningham. The question was, do you support a municipal option or a provincial-wide regulation established by the province? He indicated he does not support the province's legislation, which calls for municipal option, but for different reasons. He was not speaking as your lawyer. He was speaking as an individual. He felt that in fact it should be wide-open Sunday shopping and that municipalities could in fact decide that they did not wish to have an opening. That is—

Mr. Chairman: That is an awfully long preamble, Mr. Jackson.

Mr. Jackson: Fine. Then you are encouraging me to put my question directly, which is simply, is that closer to a position that you are reflecting upon, that it should be more wide open with municipalities deciding to restrict as opposed to the option of municipalities deciding to become open?

Mr. Goldstein: We would like to see wide-open shopping. We have done this now since we have started pretty well. I have not seen really any adverse reaction from the public. I think the public enjoys it. By the type of

business that we do on Sunday, I think they really enjoy coming to our stores or any other particular store to shop on Sunday. I do not think any of the things that have been said about Sunday shopping are a reality. I think the reality is basically that the people really do enjoy it. They might not be as vocal as they should be, but they do enjoy it.

Mr. Kanter: I am still struggling with the difference between a drugstore that sells groceries and a grocery store that sells drugs. Maybe you could enlighten me on that difference.

Mr. Goldstein: You know something, when you are in the retail business, and we are a drugstore, OK, as a drugstore, we try to get additional sales. We try to encourage people to come into our stores more often. By offering a different variety of product, we can get them to come into our store a couple of times a week. This is the whole premise on which retailing works. You get them to come in and you try to get them to shop.

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Mr. Kanter: Sorry to interrupt, but we do not have much time. Let me see if I can pursue the question a different way. Do you have any idea what percentage of your sales comes from prescriptions at Hy and Zel's?

Mr. Goldstein: Yes. Eight per cent of our sales are pure prescriptions.

Mr. Himmel: Prescriptions only. You should tell them about the drugstore-related products. For the drugstore-related products, our sales are over 70 per cent. Seventy per cent are prescriptions and drugstore-related products.

Mr. Kanter: Perhaps it might be beneficial for me and other members of the committee if you were to give us your definition of drugstore-related products.

Mr. Goldstein: A drugstore-related product would be a health and beauty aid product, an over-the-counter like a cough medicine or anything for an allergy, eye products, things that you normally could not get in a convenience store or anything like that.

Mr. Kanter: I do have one further question that relates to some of the questions that others were asking. It seems to me the whole legislation is fairly clear, whether you are aware of it or not, that there was a limitation of the number of employees you could have if you wanted to open on Sundays. There is no question about the rest of the week, obviously. Where you would have the option of going to your municipality and asking for its permission to be open on any basis you chose—convenience, health, safety, welfare, whatever—does not the new legislation offer you more flexibility than the old legislation, if it were enforced?

Mr. Himmel: That is if they permit wide open Sunday shopping.

Mr. Kanter: Pardon me?

Mr. Himmel: If they permit Sunday shopping, naturally it helps us.

Mr. Kanter: No, the format of the proposed legislation says that stores such as yours, over 5,000 square feet, will be closed, but you can go

to apply to your local municipality or regional government to seek an exemption on any grounds. It does not have to be tourist related. You have that opportunity under the new legislation, which you do not have under the present legislation. While not perfect in your case, would not the new legislation be an improvement for you?

Mr. Goldstein: Yes, it would be an improvement, if that is the question; not perfect, but it would be an improvement.

Mr. Kanter: Those are my questions.

Mr. Chairman: OK. Thank you very much for coming forward. We appreciate it. Your information will be put together with the rest of the information received by the committee.

Mr. Goldstein: Thank you very much for giving us the opportunity to speak and to hear some of our thoughts.

Mr. Chairman: We have an item that we previously discussed. I do not know whether over the lunch break there has been any break in the discussions.

Mr. Kanter: I think there may be an agreement. This has not been discussed with the other parties, but I propose—and I think Mrs. Cunningham is interested in this as well—that those who requested to appear before this committee prior to the relevant date be allowed to do so, including members, but that members not appear in preference to any member of the general public; that is, members not be allowed to bump members of the public. The second condition would be that it not constitute any sort of a precedent for this or any other committee. I think that was generally agreed. The second condition was generally agreed as well.

Mr. Chairman: I gather, inherent in that, the right of every member of the Legislature to attend any committee meeting and ask any question, if not vote, is maintained.

Mr. Philip: That is the rule.

Mr. Chairman: I just want to be clear on that. Has everybody heard what Mr. Kanter has said?

Mr. Philip: I am not sure what some of the things are that he is saying, and that is why I need some clarification.

Mr. Chairman: I think what he is saying is that the members who submitted a request to appear before the committee before the cutoff date of August 5 be heard, but on condition that they would not in any way bump any citizen who is scheduled to appear on that matter.

Mr. Philip: And who had requested the appearance by the same date.

Mr. Chairman: Prior. Yes.

Mr. Philip: I had my great faith in a wonderful witness who had appeared before the standing committee on public accounts, Marietta Roberts, that she would talk some common sense, and I guess her defence then has prevailed in favour of the committee.

Mr. Chairman: We do not know because she is not here.

Mr. Keyes: I am disappointed because I was sitting here just thinking the same thing and she is not.

Mr. Chairman: Mr. Kanter moves that members who submitted an application to appear before this committee or a request to appear before this committee before August 5 be heard on condition that they not bump or pre-empt, whatever the proper motion is, any citizen who had requested appearance before this committee by that date and that this action not constitute a precedent for this or any other committee.

Mr. Kanter: I am sorry I do not have that in writing.

Mr. Chairman: Should that read "on or before the 5th"?

Mr. Kanter: "On or before the 5th" sounds fine.

Mr. Philip: May I ask a question?

Mr. Chairman: Just a moment. Mrs. Cunningham is first, then Mr. Farnan and then Mr. Philip.

Mrs. Cunningham: Just speaking to the motion, I am very pleased that this did not become an issue with this committee. I am in favour of members of parliament speaking at any standing committee of this Legislature or any committee that is travelling throughout the province. I am very happy with the resolution that you have decided to put forth.

Mr. Farnan: I am pleased with the spirit of the resolution. I think it is a redundant resolution. It is not necessary. We advertised. People could apply. These particular individuals submitted their names. There is nothing in the process that denies them the right to be heard. To pass this resolution, somehow or other actually makes them different. I do not think they are different. I suggest that the best thing to do would be withdraw the resolution and simply figure it as they have applied.

Mr. Chairman: We will address that in a moment.

Mr. Philip: I am pleased to see that some members of the government have changed their minds on this and that the two members who did ask to appear will be heard. I think the last part of the resolution saying that it does not set a precedent would lead someone to the false conclusion that somehow we were making an exemption to the rules in letting these two members appear. In fact, that is not the case. Members of the Legislature have appeared as witnesses before committees before. This committee, along with any other committee, can decide whom it wishes to hear and who will be of benefit to it. Having put that view on the record, I am prepared to vote for the motion.

Mr. Pelissero: I will be voting in support of the motion, but I guess I want to say for the record that I believe that members of the provincial Legislature indeed occupy a unique position and have two or three opportunities that the public at large normally does not have in an attempt to shape legislation in the province. I have no problem with extending an invitation to those two individuals who have requested an appearance before the committee.

Mr. Jackson: Has there been a request from members of the House subsequent to August 5?

Mr. Chairman: No, but there is a possibility that there might be.

Mr. Jackson: My next question has to do with whether any requests that have been wait-listed will be dealt with by this committee. I know in the two other committees I serve on we are accepting those on a wait list. Will there be wait-list acceptances?

Mr. Chairman: We do have, I understand from the clerk, people wait-listed, for want of a better word. Those would be people, some of whom had notified us on or before August 5, or all of them have notified us on—

Clerk of the Committee: No. The wait list is made up of organizations and individuals who have contacted my office after the August 5 deadline. For those people who have called from out of town, where we do have room, they will be scheduled. Where we do not have room, they are put on the list and are told they are on a wait list and encouraged to send something in writing to the committee.

Mr. Jackson: OK. Therefore, if there is, then we will not be restricting other MPPs who wish to go on a wait list if space were to become available in a jurisdiction perhaps out of Toronto. This is a custom which we have been doing in other committees.

Mr. Chairman: I am not sure that is contained within the motion.

Mr. Jackson: No, it is not. I am asking clarification because the motion deals inappropriately, I might add, with two citizens of this province who are eligible to present to this committee. In essence, we are now lifting a bar from two members of the House who requested to appear before the committee. The bar should not have been there in the first place, which was Mr. Farnan's point, and he is absolutely correct. I am now simply trying to focus on that if we adhere to the principle that there is no difference, then we should also have the same rules apply to the wait list. That is all I am trying to establish. If there is an opening in Windsor and a government member wishes to appear at the Windsor hearings because there is an opening and there is no one on the wait list to go, I do not think a bar should reappear. That is all I am trying to establish.

Mr. Chairman: I know there have been exceptions, and the committee has the right to govern its own rules, but I am advised by the clerk that the procedure has been in most cases that because a member has the right to come and sit in committee, ask questions and do everything except vote, or has other access to petitions in the House or speaking in the House, that it has not been the—

Mrs. Cunningham: Common practice

Mr. Chairman: —common practice to have them come and appear as witnesses. That is the only purpose of the motion.

Mr. Jackson: The clerks are being far too polite. We have had an unfortunate experience in another committee with a member, who shall remain nameless, who attended not as a member of the committee but in an observer status. He consumed considerable amount of time to the detriment of the permanent members of the committee. That matter has been raised, and in an

effort to deal with it, we have been trying to get the individual either not to come to the committee or to present his views as a presenter. I wish to leave it at that because I do not want to deal in personalities, but this is recent and new phenomenon which we have had to deal with and we certainly would not want that to happen on this committee because our time is limited as it is to get questions across. It is sometimes better to let a member come and do his half-hour instead of taking collectively four hours over a week coming to this table.

Mr. Chairman: I think we have had a fairly broad discussion on the motion. Perhaps we can deal with the motion. That may be the subject matter for some sort of reference to one of the other committees in terms of the comments you have made.

Those in favour of the motion put forward by Mr. Kanter? Those opposed?

Motion agreed to.

Mr. Farnan: I would like it recorded why I am opposed. I think we are voting on a right that is already there and there is no need to vote for something that is plainly the right of the members of parliament to appear before the committee.

Mr. Chairman: Technically speaking, Hansard has so recorded, Mr. Farnan, so there is no need to.

There was one other item from the clerk.

Clerk of the Committee: The only other thing I would raise is that the committee has now been given the schedule for the week of August 15. Please note the proviso at the bottom that says "subject to change". We are still scheduling people in for those dates, so the schedule will be a little larger than what you see there.

Mr. Chairman: I want to thank, once again, all the members of the committee for their co-operation. It makes things run smoothly and in the final analysis it benefits the people who come here voluntarily to appear before us. It means that they do not have to wait. I appreciate that co-operation.

Mr. Kanter: Just an administrative question, can the clerk give us an idea of when we will be travelling on Monday? What time will we be leaving?

Clerk of the Committee: Two o'clock and by bus.

The committee adjourned at 4:25 p.m.

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Constitutional
Amendment

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

WEDNESDAY, AUGUST 10, 1988

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Jackson, Cameron (Burlington South PC) for Mr. Cureatz

Pelissero, Harry E. (Lincoln L) for Ms. Poole

Roberts, Marietta L. D. (Elgin L) for Ms. Hart

Clerk: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Anglican Diocese of Toronto:

Garnsworthy, the Most Reverend Lewis S., Archbishop of the Anglican Diocese of Toronto and Metropolitan for the Ecclesiastical Province of Ontario

Cuyler, the Reverend Canon A. Robert

From the Ontario Automobile Dealers Association and the Toronto Automobile Dealers Association:

Davis, Bill, Manager, Joint Government Relations Committee

Sanci, Len, Chairman, Joint Government Relations Committee

Lawson, Harry, President, TADA

Johnston, Kerv, President, OADA

From the Interfaith Committee:

Pfritimmer, the Reverend David, Director, Office for Public Policy and Governmental Affairs, Eastern Synod of the Evangelical Lutheran Church in Canada

From the People for Sunday Association of Canada:

Kingdon, Les, President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, August 10, 1988

The committee met at 10:07 a.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act and Bill 114, An Act to amend the Employment Standards Act.

Mr. Chairman: I recognize a quorum. Mr. Philip will be with us in just a few moments, but I think we can start. The first delegation this morning is from the Anglican diocese of Toronto, Archbishop Lewis Garnsworthy and Rev. Canon Robert Cuyler. I wonder if you could come forth, Archbishop and Canon.

If you would be good enough to have a seat, whoever the main presenter is could identify the parties for the purposes of Hansard. Thirty minutes is allocated. You can take any or all of that 30 minutes for your presentation, but we would appreciate it if you would leave some time for questions from the members of the committee. Please proceed.

ANGLICAN DIOCESE OF TORONTO

Archbishop Garnsworthy: Canon Cuyler and I come as representatives of the Anglican diocese of Toronto, which has spent some considerable time looking at this question of Sunday openings. We have shared our concerns with the other dioceses of the province and the Anglican Church in this province unanimously has said it is opposed to the widening of Sunday openings.

We are not alone in that, of course, as you know. Cardinal Carter and I, in talking about it, agreed we would send out a joint pastoral letter to all the parishes in the Catholic archdiocese and the Anglican archdiocese, and that we have done. I think that almost every religious group in the province stands in the same position.

Now, that may not make any difference at all. In a secular age it may mean very little to a great many people, but we do represent a large number of people in this province. The thing that is obvious to those of us concerned about this matter is that we are dealing with changing a very important tradition in the life of Ontario. Since the beginning of this province, Sunday has been treated in a particular way. It has had a special significance for all kinds of people. It is obvious, if we end up with a wide-open Sunday, that we are going to change a very vital tradition in the life of Ontario. That may be perfectly all right and may mean very little to many people.

I want to say this on the other side of the coin. I do not think it is going to make very much difference to any of the churches religiously whether Sunday is wide open or not. Those who want to go to church will go to church; those who do not want to go and do not go will do what they do now. I am not here today to argue in any kind of religious vein, except for those people who have a religious faith and who will be forced to work on Sunday. That may make a difference to that group.

I also want to say this morning that certainly the religious groups are not alone in their concern. I understand that labour groups in this province are very much opposed to the legislation being proposed. I understand that municipal associations are opposed to what is going on in our midst. I am interested, for example, that yesterday's Toronto Star has a report from Alberta where wide-open Sunday shopping is now a fact. Merchants who have tried it out are discovering it is beginning to destroy the very things we believe it will destroy in Ontario. These are family values and humanitarian concerns and hours for working people, because it is working people who are going to be vitally affected by what happens in this province, as they are in Alberta.

The diocese of Toronto is primarily interested in the humanitarian and human side of what is going to happen. I grew up in a working-class home. My father was a carpenter. He worked six days a week. For him, Sunday was the one day he could do something different. He was a member of a union that struggled for years to get shorter working hours. After all that struggle that took place 50, 70 years ago, to see some of that being dissipated is a rather deep disappointment to many people because, whether we like it or not, that is what is going to happen to all kinds of people.

It is all very well to look at Bill 114, as I have been doing. I think what Bill 114 will do is simply intimidate anybody who does not want to work on Sunday. I do not think it is going to help. I think the kind of pressure that is going to be exerted on all kinds of working people will be quite unbelievable.

I happen to believe, with maybe only a few other people, that Sunday as a pause day is a valuable institution in the life of this province, that it gives all kinds of people who live complex, busy lives in which they are running from day to night to make a living at least a chance on Sunday to do something different. I think that is important.

I think it is true in this province that two political parties at least have opposed this legislation. I think it is also true that in a recent by-election, a candidate was elected from a city in which the reason for the election among many others was opposition to this whole business of a wide-open Sunday.

I know big business and big stores like this kind of approach. I am quite sure that for them it is a very positive thing, because they are the ones to gain. I happen to believe that the people who are going to suffer as well as ordinary families are people running little businesses who cannot produce big staffs and replace employees. People who run family-operated businesses are going to have less time to themselves than they had before and they are going to be pressed to the wall.

I am not an economist. There are in this room people who are far better at economics than I am. But I do know one economic fact, and the fact is that there is only so much money to go around. If you spend it seven days a week or six days a week, there is still only so much. To destroy a tradition, to break down in one more way family life in this province, I ask, "Is this the way to go at it?"

I know there are contradictions in the legislation we have now. I know it is an Alice in Wonderland world, but there are many contradictions that we have to live with. Life is full of them.

I do want to ask a question at the end of what I have to say, and maybe

you can help me with this. I understand that the Solicitor General (Mrs. Smith), who is very much in favour of what is happening, was a member of a committee which unanimously wanted to tighten up Sunday shopping instead of loosening it. You can help me as to whether that was true.

I simply ask that as a matter of information; but from where we sit, with a great many other groups in this province, we are deeply concerned about what is happening. We simply do not agree with it and want you to know that. Thank you.

Mr. Chairman: Thank you, Archbishop. Canon, do you have any comments?

Canon Cuyler: You have the brief, which outlines the majority of what the archbishop has said, in front of you. I would just again put before you that it begins by outlining, first of all, the Metro churches' statement which the archbishop has referred to, the provincial synod's motions regarding this issue, the diocesan response and, finally, the interfaith response on page 3.

We want you to know that we, as a diocese, have been involved actively with the Coalition Against Open Sunday Shopping and we endorse the brief which that group will be bringing to you later this morning and also its quality-of-life statement.

One of the questions I have is, "Do people really want to work on Sunday?" not "Do we want unrestricted store openings?" That is the real question. Do people want to work seven days a week, or at least have a week without a pause day in it? I think the increased ripple effect of this across this province is one of the reasons that opposition to this proposal is growing.

Certainly in terms of local option, I do not think it is an option at all. As the archbishop has stated, unions, associations, the Association of Municipalities of Ontario, have all expressed their great concern. Certainly the municipalities are concerned about the domino effect that I know you have heard about.

I guess the one question is that we wonder why this has come in. One excellent interaction by the provincial government was around the winter break for schools. When the school boards in the local areas were setting their own winter break, it was mass confusion, and I had several parishes around the province which showed this. Now, of course, the province has moved in and it is much more understandable. That was because they asked the province to intervene.

Bill 114 sounds good in theory, but it will not work in practice because of all the issues the archbishop has raised. But also how can you protect a worker during the prospective work or hiring process when all the employer needs to do is ask, "Would you be willing to work on Sunday?" and that is the end of that person? Certainly the group that hears the complaints of those people, the provincial employment standards branch, is four to six months behind in hearing complaints. So when would you be heard and how realistic is that?

On page 5, we talk about the retail groups and how they themselves, in poll after poll, have opposed this legislation, certainly the small businesses. What is to be gained by it? Only large business is going to benefit, in truth.

1020

What concerns us is that no religious group, no labour union, no municipality or group of businesses has, to our knowledge, been involved. They have not been consulted about this proposed legislation, and these hearings are the very first time that we have had an opportunity to express any opinion.

I think it is time the provincial government involved those they are talking about in assisting in the decision-making process so that we could improve the present legislation. They would not need to start from square one. They could start, for example, with the recommendations of the 1986 select committee on retail store hours, which had a lot of good stuff in them.

Certainly, we believe the Ontario government needs to stress the importance and value of people, not the pursuit of material things and/or profits. The quality of life presently enjoyed by the people of this province in their community and their family life is enhanced by our present commitment to a common pause day. Therefore, we recommend that Bill 113 and Bill 114 be allowed to die or be tabled indefinitely, until the government, in consultation with those who will be affected, drafts legislation that will be acceptable, appropriate and workable.

Mr. Chairman: Thank you very much. I am now going to open it up to questions from the members. There are roughly 19 minutes, so that is about 6 minutes each.

Mr. Philip: Thank you, Your Grace, and Canon Cuyler. It is an honour to have you here.

I recall, as a member of the select committee, that one of the most meaningful presentations was made by a member of your church, Canon Busby, I believe. If I am not mistaken, it was somewhere north of Metro.

Canon Cuyler: Barrie.

Mr. Philip: Barrie, I guess.

I gather from your comments that you are saying that the combined package of these two bills is basically anti-labour legislation. Is that a good characterization of your thoughts?

Archbishop Garnsworthy: Yes, I think it is. I certainly do not see it supporting labour. I think it just makes more complex and difficult the lives of a great many families. There is a lot of pressure being put on them.

Mr. Philip: I know that you and members of your church follow the news very, very closely and had active presentations not just in Toronto but around the province at the time of the select committee.

Did you believe the Premier (Mr. Peterson) when, during the election, he stated that he was in favour of a common pause day and supported the select committee recommendations, to which you had a fairly large input?

My second question is, do you feel that these bills are a breach of faith from the original promise made during the election?

Archbishop Garnsworthy: I do not know that I can answer either of those questions, because I did not see or hear the Premier, whatever he had to say about that. So I cannot answer that.

What I do find incredible is that a government with the kind of majority this government has should take such a weak attitude as it has taken. I do not understand this: 95 members, a strong majority. To believe that turning it over to each municipality will work—we have a domino theory. I simply cannot believe this is happening.

I did not hear the Premier say the other things.

Mr. Philip: Your church has been very active in contributing to the food banks here in this city, and indeed in other cities. We are told by the representatives of the grocery chains, which are large companies but are opposed to this legislation, that their increased costs may be anywhere from 5 to 15 per cent, because they simply will not sell very much more food. They may eliminate a few of the smaller stores, but if they have a union agreement those costs of having to pay extra for people to work on Sunday, or at the very least to keep their stores open an extra day, will increase food costs. In your opinion, will this put even more stresses on the present system? All of us seem to regret that somehow we are feeding more and more people in this city through a food bank system.

Archbishop Garnsworthy: I do not see how it can be otherwise. I think you have to realize that our church—I cannot speak for others—believes that the food banks are merely Band-Aids and that they do not really solve any problems. But people at the moment, because there are thousands of hungry people, have to have some Band-Aids. That is why we have supported food banks. What we are more concerned about is what is going to happen to housing and jobs and things that seem to be in chaos in the life of the province. The real solution is not food banks, but adequate care for hungry people without jobs in this province. That is what the Anglican Church believes and we do not see much sign of some of that being solved.

Mr. Philip: The Anglican Church has played a leading role in promoting decent labour legislation. Indeed, we can trace back some of the early progressive parliamentary labour legislation to Bishop Gore in England and some of his sermons and the effect he had on influencing the Labour Party in that country. It seems that up until now, with some aberrations in the United States and perhaps British Columbia, there has been a general progress in reducing work hours.

The Premier (Mr. Peterson) says we have to live in a modern society and have to catch up with the times. Some of us have argued this is a regression of some progress that started at the beginning of the 19th century, in terms of reducing the workweek and reducing the workhour. I wonder if you have any comments on this from a historical point of view, considering the progressive movements in your church and what your church has done to contribute to better working conditions.

Archbishop Garnsworthy: Well, I would not give very high marks to the Anglican Church. The Anglican Church for a long time was middle class, wealthy and the establishment. It comes out of that kind of history, but we have had some social heroes in our life. Certainly, Bishop Gore was one. In Canada, Canon Judd, who into his 90s spoke of social justice, was one of our great figures. Ted Scott, who is known to almost everybody in this country and across the world, never stopped speaking and working for social justice for people.

So out of a church that has not a good history, I think, we have had some people who have been willing to stand up and be counted. What bothers me

are the bland statements of the Premier, who talks in vague generalities and who somehow does not seem to have a conviction about any of this. Well, that is all right; that is his business, but it affects all the rest of us.

Mrs. Cunningham: It is a pleasure to meet you, Archbishop Garnsworthy. I was looking forward to your presentation this morning. You and your colleague, Reverend Cuyler, have not disappointed me. I certainly share your concerns about this issue. To affirm your understanding of the by-election in London North, the number one issue was disappointment in the government not taking a strong stand against extended Sunday shopping.

The question at the door, for your information—I thought you might be interested in it since you mentioned it—was, "Do you want to work on Sunday?" It was not Sunday shopping. Obviously, everyone told me they did not want to work on Sunday and they voted that way. I am very happy to be here and hope to make some kind of an impact on the deliberations of this committee. It is frustrating. My colleagues are easy people to work with, but I am not sure how persuasive I can be, given the mandate of the Solicitor General (Mrs. Smith), and that was that no major changes will be made.

I am hoping that with public hearings and people like yourself feeling so strongly about family life on this issue, we will have some kind of an impact at least on my colleagues on this committee. I am here because I think I can change things. I want you to know that.

1030

My first question has to do with the improvement in the present legislation. In fact, Canon Cuyler talked about it. I am wondering: the issue there seems to be the very large difficulty in defining a tourist area. Have you ever been asked to assist this government in its formation of new legislation or in the definition of a tourist area?

Canon Cuyler: No, nor on a number of other issues.

Mrs. Cunningham: Would you be willing, if that became one of the deliberations of this committee down the road—another committee of government or the government itself—to assist us with that definition, given your interest in this issue?

Canon Cuyler: Yes.

Archbishop Garnsworthy: I think we have some expertise to offer. We have skilled clergy and laity who live in tourist areas and who know something about this. We have a lot of lay people who are in small business and whatnot. We could be of some positive help if we were asked.

It seems to me it is the tenor of democracy to be asked. What frustrates us so much is the fact that things go on without our ever being consulted. It frustrates me to be before this committee this morning. It is like, you know, being the horse let out after the barn door is shut. The bill has already had two readings and here we sit. At times, it seems to me it is like Alice in Wonderland.

Mrs. Cunningham: That may lead into yet another question. You asked for a clarification earlier about the committee you presented to a year ago. Perhaps the chairman would like to take this opportunity—I will give you a short portion of my time, Mr. Chairman, if you would like—to answer

Archbishop Garnsworthy's question. It was to do with the committee last year and the position of the Solicitor General (Mrs. Smith) at that time.

Mr. Chairman: As chairman, my job is to keep the questions flowing and make certain the people who are here as deputants get to be heard on time.

Mrs. Cunningham: Perhaps then I will just wait and a person who is willing to answer the archbishop's question could do so.

Miss Roberts: Perhaps Mrs. Cunningham could do so herself, if she understands what the answer is.

Mrs. Cunningham: I was not at the committee meetings. I can talk about what I have heard in this committee.

Mr. Chairman: I am going to perform my function. Let's just allow Mrs. Cunningham to finish her time, which is just about up. She has about a half a minute.

Mrs. Cunningham: The other question I had, or observation, was that I really appreciated the historical point of view you brought forth with relation to your own father and the fight our predecessors had to make working days shorter and to fight for a common pause day. My mother mentioned that to me last evening when we were talking about this issue, the very same thing. My grandfather had the same fight, working for the railway here in Toronto. So we are trying to keep something we worked so hard for.

I would like you to comment, if you would. Yesterday we had an interesting presentation by Mr. Danson who talked about the American experience. I am not sure whether you have had a chance to look at the Toronto Star this morning, but I wondered, because he certainly seemed to refute very much the impact on the quality of life of open Sunday shopping in the US. In fact, he had numbers showing that 42 of the 50 US states have Sunday shopping, that there is no impact on the quality of life there and that in fact that day now has become more of a family day. Would you like to make any comments on that research?

Archbishop Garnsworthy: I cannot comment because I have not lived in the United States. Unless you live in that environment, how can you speak about it? I can only speak about the Canadian environment. I think we have had a quality of life. One of the reasons is that Sunday has been a special day for people. I do not want to see that go. That is a Canadian point of view, but I cannot comment on the American.

Canon Cuyler: Can I just add to that? I spent two weeks in Alberta this past winter dealing with one of my very old school friends who introduced me to two other old school buddies. All three had had their own businesses and they had all got out of them because of the effect that working Sundays had. They did not have the staffing. They were in malls where they were forced to open. They could not deal with that. It was having a really destructive effect. They could not see their grandchildren and so all three of them have sold their businesses and taken early retirement.

Mr. Chairman: Thank you for that observation. We are going to move along now to Mr. Chiarelli, but before we do that, just to fulfil my function as chairman, Archbishop Garnsworthy, it is my understanding, and I have only been around here for three years, that a bill does not get to committee unless

it has had second reading. That is the procedure. It gets first and second reading and then it goes to committee.

Archbishop Garnsworthy: I understand the procedure, Mr. Chairman, but I just remind you how people coming before this committee can feel that it is a fait accompli before they ever get here.

Mr. Chairman: I just thought I would draw that to your attention.

Archbishop Garnsworthy: I just draw the other side to your attention.

Mr. Chairman: Thank you, Your Grace.

Mr. Chiarelli: Thank you, Archbishop Garnsworthy, for coming today and sharing your ideas. It is a very difficult issue, but just on a technical matter, I will say that the committee process very frequently comes up with improvements to legislation. I am interested in improving this legislation if we can do it in a way that is practical. On that particular issue, I have a question that kind of relates to the status quo.

We have heard that the common pause day is under attack from this legislation, as well as many other factors in our society. To what extent would you want to retrench, if I can put it that way, to the extent that at the present time we have tourist exemptions and large pharmacies, bookstores and video stores that are open? In fact, in our manufacturing sector, automobile manufacturing, for example, we have Sunday employment that is part of collective bargaining and that seems to be accepted in our society today.

We are dealing with a very complicated issue, one that has been encroaching on the common pause day to a certain extent. I would like you to comment first on the status quo vis-à-vis the types of things I have mentioned, and to tell the committee whether in principle you would prefer to see some retrenchment, and if so, in which areas would you retrench and in which areas would you try to improve the existing legislation, because we are at this committee process to try to improve this bill, which has not been accepted by the Legislature at this point?

Archbishop Garnsworthy: I think all of you are in the same boat that I am in as an administrator. We all live with contradictions. Personally, I do not want to go back to the kind of Sunday I first knew when I came to Toronto; blue Sunday with nothing for anybody. I lived alone in a room. There was nothing to do, nowhere to go. It was the worst day of the week. I am not here to tell you that was great and the church does not want to reintroduce that kind of Sunday.

We do have a contradiction that I cannot work out for you. We have some places open and a lot of places shut. We have some bookstores and movies open, and sports taking place. I cannot say I am opposed to that. I am certain, however, that I do not want to see it become wide open, because I think we at least have some restrictions; we at least have an opportunity for the majority of people to have the kind of day they want. I would like to keep that at least. I live with contradictions in my work and my life, as you do. I cannot solve them, but I do not want to see this thing just thrown wide open because we are going to get rid of more human values. Is that what we want? I do not think most people in Ontario want that.

Mr. Chiarelli: I think the term "throwing it wide open" is very relevant to this debate. I am going to ask you the question whether or not you

are necessarily convinced that this legislation will create wide-open Sunday shopping. The reason I am asking the question is that at the present time, under the tourist exemption, there are over 100 municipalities that have used the tourist exemption to open in some limited fashion even though the tourist exemption could be used to create wide-open Sunday shopping. In fact, since the legislation has been introduced, a large number of municipalities have passed resolutions stating they are opposed to wide-open Sunday shopping, and they use the term "wide-open Sunday shopping."

It appears to me that under the existing practice, under the tourist loophole, the openings have been quite limited and not wide open. In fact, the municipalities, with the local option, are sending us a message saying they will not create wide-open Sunday shopping. Do you think it necessarily follows that this legislation will create the wide-open Sunday shopping you are referring to?

1040

Archbishop Garnsworthy: I do not have a crystal ball, but I bet you anything it will. My bet would be that there will be pressure to open. Once we begin this domino effect, it will go around this province. We are not in the same ball game as we were a year ago. We now have a government that will not take a stand on this at all, that has passed the ball to the municipalities.

I do not know what is going to happen to that. I have a fear that the worst is going to happen, and it is because of that I speak today. I do not have a crystal ball, as I have already said; I have no second sight. I just think it is a bad business we are in, in the way we are doing it.

Mr. Chiarelli: Are you aware that the proposed legislation does two things? It creates a local option, but it also creates a provincial framework that in many cases creates a much tighter piece of legislation, including enforcement. A municipality, in fact, would not have to do anything if this bill were passed. It would be operating within a provincial framework that is much tighter than the existing legislation.

Archbishop Garnsworthy: And are you aware that this Bill 114, in my view, is a piece of intimidation? What it really does is intimidate an employee, who does not have much strength. Never think that big business and big stores are not going to put the pressure on. If a worker has to go through the process this bill enunciates, it will do nothing for the workers of this province. That is my view and I do not have to be a mindreader to know that.

Mr. Chiarelli: But are you aware of the provincial framework?

Mr. Chairman: Mr. Chiarelli, I am afraid we are going to have call time, as a matter of fairness to each member.

I want to thank you very much, Archbishop Garnsworthy and Canon Cuyler, for coming before us and expressing your views. Certainly, the committee is interested in the views of all people coming before it and they will be considered with reference to the legislation.

Archbishop Garnsworthy: Thank you.

Mr. Jackson: I have a question of clarification. I was not a member of the select committee His Grace referred to, but since we have the ministry representative here, is it in fact the case that the Solicitor General was a

member of that committee, and did she vote in the positive with the recommendations of that report?

Mr. Chairman: Is that a rhetorical question?

Mr. Jackson: No. I am asking the ministry to clarify. I was not a member of that committee. Is that, in fact, what happened?

Mr. Chairman: As chairman, I have indicated my view. You can ask the ministry official if you wish.

Mr. Jackson: I have requested that and you have indicated your role is to facilitate those kinds of questions. It is just a simple question of clarification.

Mr. Chairman: I believe a couple of your colleagues were on it. I think Mr. Philip was certainly on it.

Mr. Philip: If you want to redirect the question, Mr. Philip can answer. Yes, she was one of the most hawkish people, in favour of restricting Sunday as much as possible.

Mr. Chairman: So you got your answer from Mr. Philip.

The next delegation to appear before us is the Ontario Automobile Dealers Association, with Len Sanci. Will you come forward Mr. Sanci? Bill Davis? I know him.

Mr. Davis: The same one.

Mr. Chairman: No. He is a very respectable citizen of my community. Perhaps you gentlemen would have a seat and identify yourselves for purposes of the record of Hansard. Are there two more gentlemen coming forward?

Mr. Davis: Yes, two more gentlemen.

Mr. Chairman: Harry Lawson and Kerv Johnston. The original presenter might identify the individuals for Hansard. Just to reiterate, as I have done with every group, you have 30 minutes. You can use all or any part of that time, but we would prefer it if you left some time for questions for members of the committee. Perhaps you would like to proceed.

ONTARIO AUTOMOBILE DEALERS ASSOCIATION

Mr. Davis: My name is Bill Davis and I am the manager of our government relations committee. I would like to take this opportunity to introduce my colleagues who are with me this morning.

Harry Lawson of Don Howson Chevrolet Oldsmobile in North York, who is the president of the Toronto Automobile Dealers Association, is at my far right. Beside him is Kerv Johnston, who is at Barrie Honda Auto Sales in Barrie. He is the president of the Ontario Automobile Dealers Association. Len Sanci, from Oak-Land Lincoln Mercury in Oakville, is the chairman of our government relations committee.

With us today are other members of our committee, Herb Stein from Plaza Pontiac Buick here in Toronto; Bob Salvian of Oakville Honda; John Davidson of Davidson Pontiac Buick in Trenton; Mrs. Vivian Lawson of Don Howson in North

York; and John Holland, Royal Pontiac Buick in Mississauga. Also accompanying us today are Tom Tonks, the general manager of the Toronto association; John Bird, the executive director of the Ontario association; and Jack Buchanan, my colleague, associate and mentor.

I will turn it over to Mr. Sanci.

Mr. Sanci: We are pleased to appear before you this morning, and we thank you for the opportunity to express our profound concerns with respect to the intention of the government of Ontario to amend the Retail Business Holidays Act and the Employment Standards Act.

I would just like to take a moment to tell you who we are. We represent 960 franchised new-car automobile dealers, both domestic and import, located throughout Ontario. Probably in every town in the province you will find a licensed, registered new-car motor vehicle dealer, and these are the people whom we represent.

Our members sell, service and lease 91 per cent of all the new cars and trucks sold in Ontario. Our total annual volume in 1987 was \$14 billion. As referred to by Archbishop Garnsworthy, we think that represents, in general, very large business.

In 1987, our industry remitted to the Ministry of Revenue over \$515 million in retail sales tax, and now that it is eight per cent rather than seven per cent, I am sure you will find that will be in excess of \$600 million.

The dealers of Ontario provide employment for 40,000 persons in a diversity of responsibilities from salespeople to clerical staff, accountants, auto mechanics, auto-body personnel, leasing and parts managers, service advisers and management staff.

Our members are actively involved in the life of their local community through the sponsorship of local athletic teams and the support of various charitable organizations.

I would like to tell you some of the things that we do.

Two weeks ago our association held its third annual celebrity charity golf tournament in the city of Barrie in support of the Ontario Special Olympics, a year-round annual program which provides recreational, sports and fitness opportunities for the developmentally handicapped children and adults in the province. We are extremely proud of our involvement in this project and our record over the past three years in which our members, through their enthusiastic support of this tournament, have contributed in excess of \$125,000 to this worthwhile project. We are just beginning with it, too. We have some real plans to do many other things.

Our members recognize that well-trained, professional people are the key to the success of our business. The Ontario Automobile Dealers Association has supported the establishment of the Canadian Automotive Institute and has contributed \$1.2 million to the building of this institute on the campus at Georgian College in Barrie.

If young people want to enter our business, now they do not have to start at the bottom end of the scale and try to find a career opportunity. We have opportunity available through a community college where they can start with full knowledge.

The institute plans to offer courses in the wholesaling and retailing of automobiles and auto parts, engineering, design and research. The new school building will be officially open on October 15, a first for the Canadian auto industry, and we are very proud of it.

Mr. Chairman: Congratulations.

Mr. Sanci: Thank you. We are very proud of the opportunities to get young people to come and join our business. It is a wonderful business.

Our association financially supports the RIDE program in Metropolitan Toronto. We put all the cars on the road. We help the police to see, hopefully, that they are handled properly.

The Toronto automobile dealers, in co-operation with the Metropolitan Toronto Police Association, sponsor the annual bicycle rodeo, a program that promotes safety for children riding bicycles.

Our association and individual members make a concerted effort to be good corporate citizens.

The Ontario automobile dealers wish to join with the majority of Ontarians, our colleagues in the retail business and workers in this province in voicing our strong opposition to the proposed legislation, Bill 113, introduced by the provincial government on April 25. It does not have to be a matter, we have found in our industry, of determining whether people want to work on a Sunday or not: they do not want to. We believe that if the option clause is passed into law, it will only be a matter of time before Ontario will have wide-open Sunday shopping and that the common day of rest many Ontarians have come to expect and enjoy will be eroded and there will be a negative impact on the quality of the family life of the province.

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Two previous reports, the Progressive Conservative task force on extended shopping hours in 1986, and the government's own select committee on retail store hours in 1987, of which the present Solicitor General, the Honourable Joan Smith, was a member, concluded unanimously that the primary responsibility for the administration of the Retail Business Holidays Act, or other legislation relating to retailing on holidays, should remain that of the provincial government. We agree with this viewpoint. Only on a provincial basis can there exist uniformity and consistency across Ontario with respect to legislating a common pause day and minimizing retailing activities.

We are convinced that as municipalities remove the present restrictions, enabling retail outlets to open on Sunday, the domino effect will occur as neighbouring villages and cities, because of market pressure, will be forced to allow local merchants to open on Sunday. The result will be wide-open Sunday shopping across the province.

Our conviction is supported by the statement of the Attorney General, the Honourable Ian Scott, made in the district court of Ontario in the government's case against Paul Magder: "Employees in the retail sector were viewed as being in need of a statutorily mandated day of rest. Without such a regulation prohibiting Sunday openings, the vigorous competition for market share would force many retailers to open" against their will.

Last week, the Honourable Joan Smith, Solicitor General for Ontario,

concurred that the domino effect would happen, although she stopped short of confirming that the result would be wide-open Sunday shopping. However, with the introduction of Bill 114, which provides an employee with the right to refuse Sunday work, we have an indication that the government anticipates that the eventual result of Bill 113 will be wide-open Sunday shopping. We again emphasize that the option clause will erode the common day of rest and negatively impact upon family life in Ontario, which already has many stresses placed on it through changes in social norms and values.

Historically in our province, due to the influence of tradition, cultural, social and religious factors, the common day of pause has come to be generally regarded and accepted by the majority of Ontarians as Sunday. We are generally small businessmen and women who own and operate our own businesses, but we are also husbands, fathers, wives, mothers and children. We also wish to enjoy, as our employees and management staff do, time with our families and friends on a common day of rest as now exists in the province. A recent survey of all members of our association indicates 98 per cent are opposed to shopping Sunday. That is our members, that is the dealers; 98 per cent. I am sure that with the employees, if it is not 100 per cent, 99.5 per cent are opposed.

Our members have given us a mandate to vigorously oppose the option clause contained in Bill 113. Therefore, we are in total agreement with the statement of the Attorney General of this province who, in the government's case in the district court, said: "A uniform pause day was needed to allow the pause day of retail workers to coincide with that of their school-aged children, spouses and friends and community events. A quality common day of recreation was needed for as many of Ontario's citizens as was possible."

If wide-open Sundays occur in Ontario due to Bill 113, what are the implications for the retail auto industry? What does it do to me and my colleagues? First and foremost, it will mean an increased cost to the consumer in the purchase of a new or used car or truck. There are some errors on the form that we have submitted to you. There is a typographical error on the dollar, so it is not what it says. We estimate the additional operating cost and salaries will increase dealers' costs to sell an automobile by seven to 10 per cent or, on the average, \$100 to \$150 per car. However, we cannot anticipate the expectation of the consumer. If a new car is purchased on a Sunday, will there be an expectation to have the car serviced and repaired on a Sunday? If full service is required from our industry, and not just the sales department, it is possible that our costs might go as high as—I do not know where it would go to—another 15 per cent.

There will be no significant creation of new employment opportunities within our industry for students or part-time staff because we are rigidly governed by government regulations and licencing requirements. In Alberta, studies have indicated the volume of sales did not significantly increase because dealers were open on Sunday. What did occur was an increase in the price of an automobile due to additional operating costs. The extended hours available to the consumer during the week were reduced and their management staffs, in order to work on the Sunday, were given time off in lieu of Sunday, like a Wednesday morning and a Tuesday afternoon; not worthwhile time to be off.

Our association maintains that none of the principal reasons which have motivated certain groups to encourage Sunday shopping are applicable to the automobile dealers across Ontario. We cannot conduct business without fully trained and licenced sales people and sales managers and, therefore, cannot

provide part-time opportunity for unemployed people. Consumers shop many different makes of automobiles and dealerships. They get different answers because they shop different sized cars. They shop specialty cars, compact cars and family sedans and they get different prices and ideas. The option costs are different. The confusion that enters into the consumer's mind when he is buying a car is tremendous.

We cannot have untrained, unqualified, incapable people talking to those consumers. We cannot have anything but a professional there to answer the questions. What is essential to us is the fact that we assist the shopper in making his selection. Without quality, trained people, how do they help the consumer make a selection if they do not know all of the details? We must have that kind of people on duty. We cannot provide part-time sales people.

There is no additional market that we can appeal to, as the nature of our business is not marketing to visitors to Canada. Therefore, we do not appeal to tourists. Tourists from the United States are not our target. We cannot sell to them. We believe our industry would not sell one additional vehicle, but would have to absorb substantial increases in administration expense that would then be passed on to the consumer. Over the years, our industry has been restricted from appealing to many top-calibre young potential executive-type employees because of the demands of year-round Saturday business hours. In fact, we have lost many of this type to industries and government positions that offer 40 hour work weeks, and never on Saturday.

I, too, as was mentioned here before, was born into a family that had a small business and we worked six days a week all of our lives, and I always have. Our businesses have been open six days a week. We have no problem with the sixth day. It is the seventh day that is poison to us. We urge you to defeat the local-option clause of Bill 113 and retain the principle that the primary responsibility for the administration of the Retail Business Holidays Act, or other legislation relating to retailing on holidays, should remain that of the provincial government.

The crux of our presentation to you is, however, if this committee decides after the public hearings to recommend to the government of Ontario the passage of Bill 113, then our association requests that the committee incorporate an amendment to the proposed legislation which would provide a provision for the Ontario Automobile Dealers Association to be excluded from any municipal bylaw that would require our members to be open on Sunday. This will provide an exclusion similar to the one we assume will apply to the Brewers' Retail stores, the Liquor Control Board of Ontario outlets and government offices throughout the province that sell you licences or stamps, like post offices. Nothing can benefit the Ontario Automobile Dealers Association by being available on a Sunday.

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Our comments on Bill 114 are brief and to the point. It is our opinion that the proposed legislation will not protect employees who refuse Sunday work assignments unless the term "unreasonable" is more clearly defined. Surely it may protect them from having to appear at work on a Sunday, but how would it affect their opportunity for promotion, their image in the employer's eye? It is nonsense to believe that it would not affect them.

Mr. Chairman and members of the committee, we wish to thank you for this opportunity to present the concerns of the Ontario automobile dealers to you. We would be pleased to respond to any questions.

Mr. Chairman: Thank you. Before the first questioner starts, at page 4 you gave us a correction. I want to make sure that all members corrected that in the brief.

Mr. Sanci: Yes, please.

Mr. Chairman: It should be \$100 rather than \$1,000 and \$150 rather than \$1,500?

Mr. Sanci: It should be \$100 to \$150 increase; that is what we estimate.

Mr. Chairman: Is it \$100 to \$115?

Mr. Sanci: To \$150, in that range somewhere. It is hard to tell.

Mr. Chairman: The second item, at the end of that paragraph you indicated the cost increase might go as high as another—

Mr. Sanci: Another 15 per cent.

Mr. Chairman: I have to go back to the 10 per cent where you were talking about seven to 10 per cent, perhaps increasing to 15 or are you talking about seven to 10 per cent increasing to possibly 25 per cent?

Mr. Sanci: An additional 15 if we have to open the service area.

Mr. Chairman: OK. I just wanted to clarify that.

Mr. Sanci: That is really the expensive part to open on Sunday.

Mr. Keyes: For clarification, if the seven or 10 per cent figure is accurate, surely those other figures were accurate before. I have not found a car really under \$15,000 and 10 per cent of a \$15,000 car would be \$1,500. So I ask them to check the percentages. I think you have made an error still in what you have corrected.

Mr. Sanci: No, no, it is our cost to sell that would increase, not the cost of the car.

Mr. Keyes: The cost to sell.

Mr. Sanci: Yes, our cost to sell, which is the important thing that we pass on to you when you buy it.

Mr. Keyes: OK. You ought to change the words after "will increase."

Mr. Sanci: Correct. Not the purchase price. The purchase price of the car will not go up by that amount of money. The manufacturer is not going to increase the purchase price. The negotiations that go on in an automobile purchase will be limited by another \$100 to \$150, because our cost to sell, to have the people there that day—remembering that if we are, not all will open and those that will open, the major factor that will affect them immediately is that they will throw great big ads in the newspapers that say, "Open on Sunday," and that ad is added to the bottom line of the purchase of your car.

Mr. Chairman: OK. That has clarified the issue. I consider that time as 15 minutes, five for each caucus. Mr. Hampton is first.

Mr. Hampton: Gentlemen, I want to thank you for taking the time to appear here today. I appreciate your expertise. I appreciate that you know something about the retail market and how it operates and how competitive it is. That is what I would like to focus on.

You mention on page 2 of your brief, that municipalities, "because of market pressure, will be forced to allow local merchants to open on Sunday." I had this explained to me by a local businessman in this sense.

He said, "There is always going to be somebody who will say that for the next 10 years or the next five years he will work Sundays in order to get ahead. If everybody else wants to be with his children or grandchildren on Sundays, fine, but he will go out there and do whatever he has to do to work on Sundays, and he will put it to local municipal councillors this way, 'If I have to, I will go to the neighbouring municipality and tell them, I will open a brand-new garage if you will OK me to be open on Sundays.'" I think that is realistic, because I know people who are like that.

You are what I consider experts in this area. Is that a realistic scenario, that there will always be somebody out there who says, "If I can get an advantage by doing it this way, I will do it"?

Mr. Sanci: Most certainly; 98 per cent of our members have given us their mandate to go ahead and do our best. The two per cent say, "I am not too concerned there." They are the ones who may anxious to open on a Sunday, but I do not think it is reasonable to deal to two per cent of the number of our dealers.

Mr. Lawson: Could I get in a comment on that? There was an attempt to close on Saturdays during July and August, to give a holiday weekend to our employees during the hot summer months, when frankly business is not as brisk as we would like it anyway. If we are open, more often than not, the employees are standing looking at each other or out the window for a good portion of the day.

All it takes is for one neighbouring dealer to decide he wants to open on Saturday, to take advantage of it because the rest are closed. All of a sudden, his neighbour says, "I cannot afford to have my people lose those commissions and I certainly do not want to lose the sale of a new or used car to my neighbour down the street, so I will open." It goes right down the street and then it goes south, north, east and everybody is open. As a consequence, we do not have closing on Saturdays during July and August any more.

Mr. Hampton: Is this what you understand by the domino effect? I am interested. The Solicitor General was here a few days ago and said the domino effect is a myth. That is what she said in her opening statement. Do you think the domino effect is a myth?

Mr. Sanci: As it applies to other dealers opening on Sunday, it is a fact.

Mr. Hampton: You stated in your comment that you do not think Bill 114, the bill that is supposed to provide protection to employees who do not want to work Sundays—I believe I can paraphrase you—is worth much, that in fact it is more intimidating than it is protective.

Mr. Sanci: In reality, it may give the employee an opportunity to

say: "There is the bill. I am not working on Sunday." But that finishes his career.

Mr. Hampton: Again, a local businessperson put it to me this way. She said to me: "If I have to stay open on Sunday, if the market pressure forces me to stay open on Sunday, then I'm going to need a staff that will work on Sunday. If I find people who won't, I'm not going to mess around with this Bill 114. I'll simply give them fewer hours than I would otherwise give them or when it comes time to give promotions, they won't get a promotion or if everybody else is going to get a pay raise, I won't give those people a pay raise. I'll subtly and quietly give them the message: 'Move on. The rest of us are being forced to work on Sunday. I expect full compliance from my staff. If you can't comply, move on.'" Is that a realistic way this might happen?

Mr. Sanci: I can only give you my opinion of that.

Mr. Hampton: That is what I am asking for, because you have some expertise here.

Mr. Sanci: In reality, I cannot imagine that if an employer went to the employee and said, "We're going to take an edge on those other automobile dealers, we're going to open on Sunday and grab a bigger piece of the market, and you're going to work," the employee would say: "No, I don't want to. There is the bill that says I don't have to." You are in very bad eyes. I think that employee's career at that particular dealership would be in great jeopardy.

Mr. Hampton: I have one final question for you. In your brief, you have referred to some of the comments the Attorney General (Mr. Scott) made in defending the existing Retail Business Holidays Act. Would it be your understanding, having read through some of those things, that the existing legislation did not do a completely successful job? We are still waiting for statistics from the Solicitor General showing exactly how many violations there were. As far as I know, we do not have those yet. Although they say to us there are all kinds of violations, they still have not provided the statistics.

Mr. Chairman: For your information, Mr. Hampton, that question was asked and an answer was given, which you will find in Hansard from yesterday.

Mr. Hampton: OK, I have not had a chance to look at all that yet.

Mr. Philip: Hansard has not been issued yet.

Mr. Chairman: Well, when it is.

Mr. Hampton: Is it your understanding that the existing law attempts to restrict Sunday commercialism and does attempt to promote a common pause day? Is that your understanding of the existing law?

Mr. Sanci: My opinion is it supports a common day of pause, which is a necessary thing, I believe. It makes it realistic. I do not think it is restricting our opportunity to sell automobiles. We are open until 9 or 10 four nights a week. We are open six days a week. We are open until six o'clock. I am willing to wager that not one of you people has ever been in an automobile dealership at nine o'clock at night and been told: "Sorry, we're closed now. Out you go." That has never happened and it never will. We are pretty competitive people. I think we do a darned fine job. There are plenty of hours.

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Mr. Hampton: I just want a second part to that question.

Mr. Chairman: I am sorry, to be fair, and I am going to be fair to everybody, your time is over. I do not see any other hands. Unless I see some—

Mr. Hampton: Then I would like to come back.

Mr. Chairman: We will decide on that if the time is not being used. We do have a hand.

Mrs. Cunningham.: Thank you very much for this presentation. You mentioned it was brief and to the point. I would like to emphasize "to the point." I think most of the concerns that have been articulated to us, either at home in our own ridings or on the telephone as people phone, having watched this hearing, to support some of the questions and some of our concerns, were very well articulated in your brief. Sometimes I wonder if those people who are articulate and make such good points are being listened to at all.

That is my concern as a member of the opposition on this committee. I am wondering where we are going to be going with this legislation. The Liberals use the word "genius" to describe their legislation. I think the genius of yours is that if we are stuck with it, at least some of us will be able to come back on your behalf and in fact put forth a motion to exclude you based on the implications of your brief. I will certainly be discussing that with our caucus as a possibility. I want you to know that. I think you have made your points very well. We are certainly in support of the business you do.

I would like to take this moment to compliment you in another way. I think you pointed out during your presentation the importance of family time, so that you can contribute to your community. Your people do that. You talked about the activity of your members and your community life. You talked about the Barrie golf tournament, which I was aware of, a cause I am very much part of.

I would also like to commend you, as the chairman did, for the Canadian Automotive Institute that you have begun. In my position as critic I am concerned about young people in the world of work relating to the needs of our society. I think you have done a lot more than just express your concerns today about Bill 113 and Bill 114. Maybe the quality of life has been presented.

I have a couple of questions. I am doing a little survey here. I was wondering whether anybody had ever asked you about your definition of a tourist region. I know it does not apply to your business, but it may be something we will want to look at. Has anybody ever asked you about what you think a tourist region is in your local communities, or have you given it any thought?

Mr. Sanci: Not me personally, no.

Mrs. Cunningham: If your group does have observations and if you were asked whether you would participate in discussions or assist us in that definition—although you have made a point of being excluded from legislation, there are other members of your community who would not be excluded—I wonder whether anybody within your group would help us with that.

Mr. Johnston: I cannot help you with it but I can tell you some of the problems. I am from Barrie. Oro township immediately to the north of us is designated as a tourist area. Thank God there are no car dealers there; otherwise, we would be open on Sundays. It would just be a matter of time until I and all the other dealers in Barrie would have to follow suit.

Mrs. Cunningham: Those remarks will be in Hansard and we will be using them in the recommendation that we may have to put forth.

Mr. Chairman: Mr. Jackson, you have two minutes.

Mr. Jackson: I will yield if there are other questions. Are there no more questions?

Mr. Chairman: There are, yes. Miss Roberts. But—

Mr. Jackson: Ok. Mr. Sanci, thank you for an excellent brief.

As of this point, there has not been a single deputant before this committee who has fully endorsed this legislation. The one person who came relatively close to it brought to our attention certain statistics which we will be examining.

He made reference to a concept of legislating commission premiums for Sundays. Would you like to comment on that? It is a practice that is occurring in the United States. He proposed that that was a solution here in Ontario. Would you like to comment on that, please, for the record?

Mr. Sanci: I do not know how it could be done. I do not think I could comment on it. There is only one question I would ask. Who would pay the premium?

Mr. Jackson: I guess the point is, in your figuring of the seven per cent to 15 per cent you have not calculated commission premium as a concept, so it could in fact be even higher should this government legislate a commission premium to protect Sunday workers, as other governments on this continent have done.

Mr. Sanci: You know who would pay it.

Mr. Jackson: Yes. Everyone has agreed that the costs are passed on to the consumer.

My second question is with respect to your point about your municipal exemption. Certainly the London area auto dealers have access to the Premier and the Solicitor General, both at election time and between elections. I wonder if you had an opportunity to fly your proposal to either of those individuals and if you have received any feedback, either as an association or through the London area auto dealers.

Mr. Johnston: As president of the Ontario dealers, the London dealers have told us they support exactly what we have said here today.

Mr. Jackson: But you have not written to the Premier or to the Solicitor General specifically with your request for exemption?

Mr. Johnston: Oh, yes.

Mr. Jackson: Have you received any feedback from the government on the point?

Mr. Sanci: Only that the hearings are going on and we have an opportunity to appear before them.

Mr. Jackson: Finally, you make an interesting point showing private versus public sector and trends in employment. I appreciate that you are one of the first to put in perspective for us the work hours for persons in Ontario who have secure government jobs versus those who must deal with the private sector.

I think you have underscored a contradiction in so far as we, as legislators, are suggesting and approving the reduction of workweek hours for civil servants and at the same time increasing them for those in the private sector. Your 40 hours I think may be rather high, given that it is our understanding it is closer to 37.5 hours and dropping.

I want to thank you for putting that point in perspective, and if in subsequent briefs you want to refine it, in fact the trend is dropping for citizens who have government jobs and will therefore be increasing with respect to—

Mr. Sanci: I would like to just add to that.

Mr. Chairman: A very brief comment.

Mr. Sanci: A very brief comment would be that our employees are important to the success of our dealership. Because of the competitive nature of the business that we have, we must have good people. I do not want to be in a position, as Archbishop Garnsworthy mentioned his father was, where workers had to rely on a union to get them the help that they needed to have reasonable hours. We are doing that for our employees. Our employees do not want to work on Sundays. If there is nothing we can do, and some of them open and the rest of us open, they then need to go to another source to get help. We are trying to help them here now.

Miss Roberts: I will be brief, because there is not very much time left. I would like to compliment you on your brief, which is just excellent. I would also like to bring to the attention of the entire committee the excellent job that you people have done in the past. I can only indicate to the committee that in my area a dealer was open against the law and was charged many times with respect to that. Because of the present law it could not be closed down, but your association took all the steps necessary to see that the dealer did not continue. Things were done, and you people have been very good citizens and very helpful citizens in dealing with the present law and the problems in the present law, which I am sure you are all aware of.

I have one question which you answered briefly, and it was that in Oro township, I believe, there was not a car dealership. Is there a car dealership now open in a tourist area anywhere in Ontario?

Mr. Johnston: Yes.

Miss Roberts: How many?

Mr. Johnston: I have not counted them, but from personal knowledge I can tell you of one I know.

Miss Roberts: So there are some open in tourist areas now.

Mr. Johnston: Yes.

Miss Roberts: But you are asking in your brief to have everybody excluded. Even if we leave the tourist area in there, you want to make sure that car dealerships all over Ontario, in a tourist area or outside a tourist area, are closed.

Mr. Johnston: Yes.

Mr. Sanci: That is the mandate we have from our members.

Miss Roberts: That is what you are asking for.

Mr. Sanci: Yes, it is.

Miss Roberts: So you want something specific that says, "No matter what any municipality does, we do not want car dealerships to be open." Is that correct?

Mr. Sanci: That is exactly what we are asking.

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Miss Roberts: You understand that municipalities cannot require you to be open?

Mr. Sanci: We know that.

Miss Roberts: People only open, even in the tourist area, because they want to, not because they are required to do so. Is that your understanding?

Mr. Sanci: Yes.

Mr. Philip: May I ask a question?

Miss Roberts: I am not finished yet. I would suggest that you have made some type of arrangement among yourselves and that you feel your industry is not part of any tourism. Is that correct?

Mr. Sanci: We do not appeal to a tourist market at all. We do not sell to the United States.

Miss Roberts: You do not sell to someone who comes from southern Ontario to go to northern Ontario? Someone like that?

Mr. Sanci: That is right.

Miss Roberts: You do not have very much faith in Bill 114, that is, the labour legislation. Do you think it should be in place now to protect the people in your industry who now have to work because of the tourist area and because people are allowed to be open? Even if Bill 113 were shelved for some reason or other, do you not think Bill 114 would be at least a step in the right direction to help out those people who already work?

Mr. Sanci: Are compelled to work on Sunday?

Miss Roberts: That is right, compelled, and there are a large number in Ontario. I know you can only speak from your own industry. I do not expect you to give an overall perspective.

Mr. Sanci: I think that if Bill 113 were tightened up, it would not be open and we would not have any reason for Bill 114.

Miss Roberts: You do not think Bill 114 will help those people who are already working, who already are required to work and have no protection? You do not want them to have protection?

Mr. Sanci: It is hard for me to answer that because I do not know what the traffic of their streets looks like on a Sunday in that tourist area. It is mentioned that—

Miss Roberts: I am talking about workers' protection; I am not talking about traffic on the street.

Mr. Sanci: I think our members are responsible enough people to hear the voice of their employees. If my employees were in harmony, I would know what to do, and I think the dealer in that area should probably be responsible for looking after his own people.

Miss Roberts: That is a very good answer and I do appreciate that.

The only other thing I have to ask about is whether your dealerships open their service bays at all to supply gas or to supply any services on a Sunday now.

Mr. Sanci: No, they do not.

Miss Roberts: No one does?

Mr. Sanci: There are small dealers where the franchise is a service station with one car parked at the side. I am sure they do sell gas and offer services on Sunday as requirements avail them in their particular areas. That is the nature of our business. We are in small towns. None of the Toronto dealers do and none of the large community dealers do, but the small-town dealers would do that as a convenience.

Miss Roberts: Sort of as an option for what they do in their area; like a local option of some type. I really appreciate your comments and I do appreciate what a good citizen you have been in the past in helping to enforce a law that is right now in place and not enforceable.

Mr. Chairman: That is the balance of the time we have allocated. We have to move on. We have people who are waiting here and who wish to address this committee. We are doing very well and I would like to keep the flow going.

The next group is the interfaith committee, David Pfrimmer.

I am sorry. I want to thank the preceding group very much for coming forward. It is appreciated that you took time out to voluntarily come here and give us your views.

Mr. Sanci: Thank you.

Mr. Chairman: Mr. Pfrimmer, perhaps you would have a seat. Welcome.

I wonder if you might introduce the other members of the interfaith committee. I would outline to you that you have 30 minutes. You can use all or any part of that time for your presentation. However, it would be desirable if you left a portion of it for members to ask questions. I would ask the presenter or presenters to identify themselves for purposes of Hansard.

INTERFAITH COMMITTEE

Mr. Pfrimmer: I would like to thank the members of this committee on behalf of the interfaith committee for the opportunity to address them on this important question. We appreciate the chance to be here to speak about the question of Sunday shopping. There is always a danger in committee work that it has not been said until everybody has said it, so I hope we will not rehash many of the issues that you have already heard from other groups.

My name is Pastor David Pfrimmer. I have been asked to serve as spokesperson for the interfaith committee, and I am a pastor in the Evangelical Lutheran Church in Canada.

Mr. Chairman: Let me apologize for having called you mister. That is what I had on my list.

Mr. Pfrimmer: That is OK. You can call me mister. That is quite fine.

As part of our delegation, also with me is the Reverend Dr. Ray Hodgson, with the Presbyterian Church of Canada; Dr. Suwanda Sugunasiri, president of the Buddhist Council of Canada, and Doug Palmer from the Baptist Convention of Ontario and Quebec. Regrettably, Haroon Salamat, who was supposed to be with us, was called away on an urgent matter late last night and was unable to be here this morning. He expressed his regrets and asked us to speak on his behalf.

In addition to our delegation, I am sure you will observe that there are many other faith communities that have appeared before you who support what we are about to say. Many of their representatives are also present in our audience this morning.

We want to thank you again for the opportunity to present our concerns. It is also with some regret that we present these, since many of us have made similar interventions and presentations before to such groups as the select committee which was established to consider this same topic two years ago. We had hoped that, through that process of community consultations and in the light of the unanimous recommendations of that committee to maintain Sunday as a common pause day, the desire of a majority of Ontarians to preserve the social character of Sunday would be legislatively supported by the provincial government. Unfortunately, this is not the case.

Fundamentally, the proposed legislation, as we see it, is about whether there will be unrestricted retail shopping in this province. While protestations are made to the contrary under the guise of letting each community make the final decision, the almost unanimous view of the Association of Municipalities of Ontario is that the local option is not an option. Ultimately, it will lead to unrestricted shopping through a domino effect. Therefore, the question is not whether to allow local jurisdictions to decide, because in point of fact they have already decided, in calling upon the provincial government to provide legislation safeguarding the unique character of Sunday.

The real question, again, ultimately is, do Ontarians want unrestricted store openings on Sunday? Currently, 57 per cent of Ontarians are saying no, with that percentage rising steadily since this debate began.

While, superficially, the question may seem to be Sunday shopping, people across this province and across the country are keenly aware that the real issue is working on Sundays. People are aware that the ripple effect will result in potentially one third of our workforce having to work on Sundays. The social burden of working will undoubtedly fall upon those most vulnerable in the employment market. The social costs to these workers, their children, families and communities cannot quantitatively be measured in statistics and cost-benefit scenarios. Therefore, we are afraid they will be glazed over. I might add at this point that some comparisons of the success of such legislation in other jurisdictions do not consider this reality.

For the religious community, the question of a common pause day is a social, not a religious, question. The religious community is not asking the government to legislate religious practice nor to guarantee participation in religious communities. We firmly believe that the human community requires this common pause day to enable the regeneration of the human community and the preservation of a quality of life that enables all people, whatever their religious convictions, to be fully human. Historically, this common pause day has been Sunday in Canada, but in practice it might very well be another day, provided that it was a common day with legal protection for those people whose day for corporate worship falls on another day.

1130

While recognizing that this is a social issue, we wish to reaffirm the rights to freedom of religion for Ontarians as provided in the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code. Therefore, we support the Sunday exception that safeguards the rights of certain religious communities. We are also concerned that those wishing to engage in the religious practices of their faith community not be subjected to discrimination.

Given this understanding of the issue that Sunday work adversely affects the quality of life, we would identify the following more specific concerns with the two proposed pieces of legislation, Bill 113 particularly:

Bill 113 does not, in our opinion, address the real issue, Sunday work. We believe that the result of this legislation will be that local communities will ultimately be forced to submit, by the sheer weight of market pressures, to unrestricted Sunday shopping. The result will be that an increasing number of people, potentially one third of the workforce, will be forced to work, eroding the availability of quality time for families and communities.

Bill 113 does not reflect what people want. They want Sundays off. Survey after survey has indicated growing support for preserving the special family-community character of Sunday. Overall, 57 per cent of Ontarians are opposed to Sunday shopping. More importantly, even 64 per cent of working mothers are opposed to Sunday shopping. Even consumers are not clamoring for wide-open Sunday shopping as evidenced by the Consumers' Association of Canada's survey, which found that 56 per cent of Canadians did not support mall openings on Sunday. The question must clearly be: In whose interest are these pieces of legislation?

Bill 113 is not, in our opinion, fair to business. The proposed legislation fails to resolve the problem facing those responsible for enforcement. The business community does not want unrestricted shopping on Sundays. For example, in a recent survey conducted by the Kitchener Chamber of Commerce, 81 per cent of the businesses responding opposed unrestricted Sunday shopping and 76 per cent opposed Sunday shopping even if employees were not required to work.

Many small business people continually tell us and members of our community that they do not want to be forced to work on Sundays. I think the business community recognizes the need for the province to establish and maintain fair rules for conducting business, that justice might be done for both large and small business and those in downtown locations as well as malls.

With regard to Bill 114, we believe that while in theory it may sound logical, in practice it will not safeguard the rights of workers. Our specific concerns are as follows:

Bill 114 places the onus on the employee rather than the employer. This change fails to recognize the disproportionate level of power held by employers. As Chief Justice Brian Dickson accurately observed in his decision of December 1986, such an emphasis "would fail to recognize the subtle and coercive pressure which an employer can exert on an employee. The vulnerability of retail workers makes them an improbable group to resist such pressures."

A complaint-driven system will only serve to erode the quality of life in the workplace as employees will be reluctant, as you have just heard, to press for their time off for a picnic, to go to the beach or other activities which may not be a high priority for an employer who faces competitive pressures. Recent testimony to this very committee indicating that, in a poll conducted in the Scarborough Town Centre, employees in large retail operations were prevented from answering questions about working on Sundays, surely is evidence enough that this process will not be fair to employees.

Second, Bill 114 places increased pressures on business, particularly smaller businesses. Businesses will need to be able to document, thereby requiring some record-keeping, that they have been both fair and reasonable in their expectations of employees. This added burden also does not address the needs of managers and owners who may need to work because of the competition they are forced to face. Furthermore, those leasing space may also face subtle pressures that would exclude smaller, independent businesses from larger malls who want as many shops open as possible to attract more customers.

Our conclusion remains, as we have stated to previous investigations of this question, that the proposed legislation will seriously lead to an erosion of the quality of our common life. In spite of all protests to the contrary, the people within our constituencies see the current legislation as a means by which unrestricted Sunday shopping will become a reality in this province. If implemented, we believe it will further restrict the already limited time for families, friends and community groups, as well as introducing unwanted tensions into the workplace.

1130

We believe that while some changes may be necessary to the current Retail Business Holidays Act, the process by which those changes are to be made is as important as the changes themselves. The people of Ontario have a different view of the direction changes should take regarding retail sales.

Furthermore, they do not feel that in the current climate their views have been heard by their government on this question. These views must be heard and should be considered before the irreversible direction implied in Bill 113 and Bill 114 is established. As an interfaith committee, we have in the past been, and continue to be, willing to be part of a consultative process that develops just and fair legislation. Therefore, we would make the following recommendations:

That Bill 113 and Bill 114 be tabled indefinitely pending further consultation and study;

That the recommendations of the 1987 select committee that studied this issue be the basis to begin consideration on how to amend the current Retail Business Holidays Act; and

That the Ontario government initiate a process of consultation to study this issue with participation from all sectors of the community, particularly the Association of Municipalities of Ontario, retail associations, unions, employers, community groups, women's groups, as well as faith communities, including non-Christian communities. This process should appreciate the changing ethnocultural diversity of Ontario.

We have also appended to our presentation this morning our quality-of-life statement, which we would like to table with you. That has been signed by most of the groups that support our interfaith committee.

Mr. Hampton: I want to say I find your brief very persuasive. I think it indicates that you canvassed Bill 113 and Bill 114 fairly carefully. You seem to have looked at them from the perspective of current jurisprudence and also from the perspective of a lot of surveys that have been taken.

You have some good things to say about the existing law. In your view, does the existing law attempt as much as possible to preserve a common pause day? Do you think that is the gist of the law that is there?

Mr. Pfrimmer: I think the argument has been made that it is unenforceable and that there need to be some changes, but we feel there has been a lot of work gone into this issue for a number of years, and in more recent times there have been quite a few committees looking at this subject. We certainly feel that, with some changes, the current law could provide the basis for a very workable system within Ontario that is fair and just to all sectors of the community and ensures a common day of pause.

Mr. Hampton: Could you suggest what route to follow? I know you alluded to the recommendations of the previous committee.

Mr. Pfrimmer: I think we received those as very helpful recommendations and recognized there were some areas that needed to be worked out, but it is a lamentable situation when we say that because a law is not enforceable, we throw out the whole law and develop a new system.

Mr. Hampton: I wonder if you could tell me how you feel about this statement. My evaluation of Bills 113 and 114 is that they profess and they pretend to protect a common pause day, but in fact when you read them carefully, there are so many loopholes there that not only do they make wide-open Sunday shopping possible, I think they encourage it. Would you agree with that assessment?

1140

Mr. Pfrimmer: I think the legislation does not defend the concept of the unique social day that Sunday is as a common pause day. There are too many options, too many other unidentifiable factors, as the previous presentation was indicating. Seriously, in terms of our people, many people see it as an abdication to strictly letting the market decide. I think it leaves us vulnerable to a real dog's breakfast of options in terms of this province.

I am not sure if that answers your question specifically, but I do think what the legislation claims it will do, it does not necessarily guarantee.

Mrs. Cunningham: Thank you for taking this issue so seriously that you have a history of making presentations on the same issue. I am glad that you have not given up and that you are back here again to try to persuade this committee in its entirety to agree with the position which I think is the position of the public in Ontario: that is, we do believe in a common pause day and we do believe the Ontario government has the responsibility to make certain that that happens.

I would like to ask you a question with regard to an issue on page 3, where you talk about the religious community. "For the religious community, the question of a common pause day is a social not a religious question." Then a little farther, in the next paragraph, you talk about supporting the Sunday exception that safeguards the rights of certain religious communities. You are concerned that those wishing to engage in religious practice of their faith's community not be subjected to discrimination.

Both you and the other group that presented today talked about Bill 114 a little bit. I am wondering what you thought of the term "reasonable." I am talking about a person who has to work on Sunday or who has been asked to work on Sunday, who does not want to work on Sunday and would consider it reasonable that he not work on Sunday because that has been his day to attend religious services. What would you think of a judgement around that as being the issue?

Mr. Pfrimmer: Certainly, I guess our hope is—and I think it is something we are very proud of in this province—that there is religious freedom and that there can be a diversity of religious tradition. I guess our concern is that those who choose to practise those religions are not discriminated against because they see themselves as religious people and part of a faith community.

I am not sure Bill 114 guarantees that freedom of religion in the practical sense. Theoretically the statutes are there, but in practice, as testimony before this committee has indicated, if an employer is looking for someone whom he or she needs to have work on a Sunday and you have a person applying who is a practising Christian who says, "I am a practising Christian; that is going to be a problem for me," we perceive that as a potential problem. There could be potential for discrimination.

Likewise in other religious communities where they have other holy days or days for religious observance, we would hope, and I am sure most of you would agree and support, that those people would have a right to participate in the practices of their religious communities, that that would be enshrined and that they would not be discriminated against in terms of employment. I know the statutes are there, but the practice can be something else.

Mrs. Cunningham: To sum it up, you are saying your concern is that some people would not get the job in the first place if they said they were practising Christians and the employer did open on Sundays. That was the point you were making about discrimination.

Mr. Pfrimmer: Right.

Mrs. Cunningham: Could I go so far as to say that you are very concerned that "reasonable" would not apply to persons who wanted not to be at work on Sunday by virtue of attending their church.

Mr. Pfrimmer: Right.

Mrs. Cunningham: That is my concern as well.

I have a few questions to do with the legislation itself in general. Do you believe that the local municipalities should have the right to make these decisions or would it be your contention that this is the responsibility of the province?

Mr. Pfrimmer: As we indicated in our recommendation, we think this legislation has to be done within a provincial framework. Obviously, there are some local realities that have to also be listened to and considered, but primarily it is a provincial responsibility. That is what we are hearing from people within our constituencies, that the province needs to set some of the standards by which this will be measured and enforced.

In our opinion, municipalities are more vulnerable than the provincial government. We would support that it be done in a provincial framework, recognizing input from the municipalities. The municipalities have already said to this committee, as well as to previous committees, that this is the case, so we would encourage it.

Mrs. Cunningham: I am assuming from what I have read into your brief, that the answer would be yes, you believe in a common pause day. Do you think part of the provincial framework, which we are hearing about constantly from this government, is in support of a common pause day, as related to Bill 113? Do you think part of the framework is the common pause day?

Mr. Pfrimmer: There are a lot of statements saying, "Yes, we support a common pause day." Many people have been in the press saying they support it. We are just saying that the practical implications of these two pieces of legislation do not match the direction that is being professed. We think we have to go back to the drawing board. Within our constituency, there are a lot of people who do not feel consulted. Basically, we are saying that if you are in favour of a common day of pause, which you say you are, then it is a provincial responsibility and you are the ones who are going to have to establish and consult with people to deal with the specifics.

Mrs. Cunningham: Thank you. I was hoping you would respond that way. Have you or any other member of this tremendous organization, in size and everything else, ever been asked to participate in any discussions around the definition of a tourist area, which seems to be the big problem for this government?

Mr. Pfrimmer: Not to my knowledge. As I said in our presentation, we are certainly willing. I think there are other groups that need to be consulted and have some input in this direction. I think this came up, popped

up, and now we are dealing with it again. One of the things we lament is the fact that we end up spending so much energy restating our arguments and restating our concerns.

Mrs. Cunningham: I very much appreciate your specific recommendations on page 5. We will take them seriously and try to put them forth, if necessary.

Mr. Kanter: Like my colleagues, I very much appreciate the submission and the efforts of Reverend Pfrimmer and his associates. I appreciate your efforts to reach out to a broader group of multifaith communities.

I do have some questions about your brief. One relates to what I think is the thrust of your brief, that the real issue is Sunday work. We have had some information before this committee from the Minister of Labour (Mr. Sorbara) and from others that there is a tremendous number of Ontario workers who work on Sundays right now. We are not talking only or primarily of people in essential services, like police and hospitals. We are talking about people in industry, people in the recreational field and people in the 100 or 125 municipalities that have tourist exemptions. In your view, should the government take action to prevent those people who now work on Sundays from working on Sundays?

Mr. Pfrimmer: It seems to me there are a couple of other questions. One is the implication—we owe a great deal of thanks to those who give up that day to provide many of the essential services, and I do not think we have thanked those people deeply enough.

Mr. Kanter: Let me be quite clear. I am not talking about essential services. I am talking about people who might manufacture automobiles or who might work at the 3M plant in London, Ontario, where they seem to have a very popular weekend shift and employees and employers seem to co-operate very effectively. I am talking about people who work in nonessential services on Sundays in Ontario. There are many hundreds of thousands of those workers, and I am asking, in your view, should the government take action to prevent or restrict them from working on Sundays?

Mr. Pfrimmer: I guess the thrust of my answer is as before. We ought to thank those who do work. I am using that as an example to say, as Archbishop Garnsworthy mentioned, that we are not purists saying that there will be no one, that we should shut down everything.

There will be people who have to work and there will be reasons for that, provided the employees' positions are safeguarded. Many of those people who work on Sundays in manufacturing have unions that negotiate on their behalf, and provided they make that decision in a collective agreement, that their rights are respected and there is some latitude for unique circumstances may personally face, then I would no, I do not think we need legislation that shuts down the whole province.

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Mr. Kanter: Let me see if I understand. You seem to be drawing a distinction. Do you feel retail workers need special protection that people in industry, finance or other sorts of activities do not require?

Mr. Pfrimmer: To my knowledge, it is only manufacturing that is the

specific case in what you are mentioning. I do not know of any financial institutions that are operating. There are certain individuals who may work because of pressures, or whatever. In some cases we have choices; we can make choices. It is not merely that we just abdicate those choices. I think in the retail sector we clearly have the ability to make a choice.

Mr. Kanter: Let's take, then, the retail sector. We have had information that there are many municipalities in Ontario, including whole cities like Sault Ste. Marie, Windsor, Niagara Falls and Fort Erie, places like that, which are now open on Sundays. Would you say the government should take action to shut them down?

Mr. Pfrimmer: Obviously, the tourist exemption—someone raised the question before—is a concern. We need to look at the specifics of what it means to be a tourist and what we are talking about. I think more importantly we have to have a vision of what kind of day we want Sunday to be if it is a common pause day. What are the kinds of things we need to encourage? We do not want just rest where people sit back and do nothing. I think, based on those criteria, we can make better judgements about whether Fort Erie or whatever city it may be should be wide open. I think it is a little bit artificial and contrived to say that a whole city, including all its retail operations and whatever, is a tourist area.

Mr. Kanter: You would feel that, for example, the tourist exemption in Niagara Falls by which pretty well the whole city, the suburban malls and the downtown area, is all exempt is excessive and should be re-examined.

Mr. Pfrimmer: I think it needs to be re-examined. I am not sure I would say it is excessive. I do not know Niagara Falls. There are some activities in Niagara Falls that should be open, and let's do it. But we do not even have a standard to measure. What is a tourist area? What are we saying? Is a big mall a tourist area? I sat through the previous presentation. Are car dealerships tourist areas? How many people go on vacation to buy a car?

Mr. Kanter: There are some areas that are now open in Ontario. I can think of Chinatown, for example, in the city of Toronto, which might be considered somewhat of a multicultural or culturally diverse community. There are perhaps other facilities in Toronto, the East Indian bazaar, that might make the same argument, although they are not now legally open on Sunday. Might there be other criteria such as multiculturalism, health and safety, in addition to tourism, that would provide a justification, in your view, for being open on Sunday?

Mr. Pfrimmer: Sure, and I think we need to look at what the criteria are. What is the measure of what we are calling tourist areas? I think people need to be consulted about that. I would also add that, to me, that is not a reason to throw out the current legislation.

Mr. Kanter: I am glad you raised that point because you referred several times in your brief, and now again, to throwing out the current legislation. I presume you are aware we are retaining, that we are amending—

Mr. Pfrimmer: We are amending.

Mr. Kanter: We are certainly not repealing the Retail Business Holidays Act.

Mr. Pfrimmer: No, I understand that. In fact—.

Mr. Kanter: Excuse me. We are keeping the essential key provision, the provincial framework whereby most stores in Ontario will have to remain closed unless a municipal council takes action to the contrary. Is that not correct?

Mr. Pfrimmer: Technically, you are right.

Mr. Kanter: Let me go further.

Mr. Pfrimmer: Wait a second. I think the argument leads to a different road. There is a difference between theory and practice, and clearly these bills reflect a critical divergence in the direction in theory and the direction in practice. I am sharing what our constituents are saying. They are saying: "We don't perceive you as retaining the current legislation. We don't perceive that the current amendments, Bill 113 and Bill 114, will lead in the direction you are telling us they will."

Mr. Kanter: I appreciate there is a serious—can I just ask one more question of the witness, Mr. Chairman?

Mr. Chairman: No. It is 11:48. We are going to have to move on.

Mr. Philip: Mr. Kanter's lines of questioning remind me of somebody who had read a lot of Freud, but never had a date.

Mr. Kanter: Read a lot of Freud?

Mr. Philip: Freud, but never had a date.

Mr. Kanter: To set the record strait, Mr. Chairman, as a point of order, I have not read Freud and I have had some dates.

Mr. Philip: Cannot separate the theoretical from the real world.

Mrs. Cunningham: —ever read Freud or had a date.

Mr. Philip: Before all of my time has run out, I want to say that I agree with your recommendations. One of the things you cover, though, is employer pressure. I am wondering if you would agree that another source of pressure on individuals who do not want to work will be fellow employee pressure.

If I am going to have to work on Sunday and I do not like it and I am giving in to the pressure of the employer or the establishment, then I am going to really resent it if you try to exercise any rights you may or may not have under this legislation and not pull your load and be there. You know, misery loves company and I am going to be very annoyed if I have to take more than my share of the Sunday work. Would you agree that employee pressure may be every bit as coercive on people, who for reasons of conscience or reasons of family, may not want to work on Sunday?

Mr. Pfrimmer: Certainly, I think the potential is there. If someone consistently gets that day off, obviously the jealousy—we see that in other areas of employment too; people are jealous, people are envious. Yes, I would agree that potential is there.

Mr. Philip: One of the things that bothers me about this is that it opens itself up not just for pressures on the family in terms of working on Sunday, but also for tremendous pressures on the workplace in terms of the group dynamics of that workplace. If the employer feels he is forced to coerce the employee in some way, if fellow employees feel that some people are going to work and not others, there is a whole group dynamics there that may in fact be what I would call mentally unhealthy in the workplace as a result of this legislation. Would you agree with that?

Mr. Pfrimmer: Sure; I think we said that. We said what we are concerned about in Bill 114 in terms of the amendment to the act is that it will introduce unwanted tensions into the workplace. These are not necessary tensions. There are other tensions that are there that are natural, given the employer-employee relationship, but these tensions—many of the employers, as you have well heard, have said, "We don't want to work on Sunday." Here they are turning around and having to work with their own employees. I do not think there is a lot of emotional investment.

Mr. Philip: I found that your arguments were quite persuasive from a secular point of view. I just want to point out that not everyone on your committee could be called a member of the Christian faith and therefore somebody who practices religious observance on Sunday. I think that just might be pointed out. I do not have a question on that.

Mr. Pfrimmer: I think that is a very important point, to realize that we have been having discussions on an interfaith basis. One of the things we can pride ourselves on in this province is the level of co-operation and collegiality that takes place between various faith communities. I think this is something that should be underscored, that this is not just a church presentation. There are many groups participating in this discussion, as well as in other forms, around other issues with the government. I think we can take some great pride in that. This is a great testimony to the kind of freedom that is present in this province to allow this religious diversity.

Mr. Chairman: I want to thank you, Mr. Pfrimmer, for coming forward and taking time out of your busy schedule to meet with us. We appreciate your brief.

Mr. Pfrimmer: Thank you very much.

Mr. Chairman: The next group is the People for Sunday Association of Canada, Les Kingdon, president. Is Mr. Kingdon here? Mr. Kingdon, have a seat and identify yourself for purposes of Hansard. You have 30 minutes, as I have indicated to the other groups. You can use all or any part of that. It would be desirable, however, that you leave some time for the members of the committee to ask questions, if they have questions—to ask questions or make statements, as you have probably noticed.

PEOPLE FOR SUNDAY ASSOCIATION OF CANADA

Mr. Kingdon: I will be brief. My name is Les Kingdon. I am presenting this brief on behalf of the People for Sunday Association of Canada. Our association recently celebrated 100 years of service in Canada and has been involved in the Sunday issue, as they say, for more than 100 years.

Ontario membership is a very large one and embraces churches, businesses, unions and individual members, and this membership has expressed a growing concern with respect to Bill 113 and Bill 114. The activities of our

association have included monitoring the many violations and in some cases the preferring of charges. In addition, we have challenged a countless number of irresponsible tourist exemption bylaws.

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Many references have been made to the Malton fruit market case, which is one where our total court costs exceeded \$30,000. After this appeal process had been completed, we were to learn that the courts do not have the jurisdiction to rule against a council that had all of the relevant materials before it and on which its decision was based.

We would acknowledge that the previous Retail Business Holidays Act contained many loopholes and that the tourist exemption in it had always been questionable. While Bill 113 has eliminated many of the loopholes, it has still not addressed the tourist exemption privilege, which is the major problem with the legislation. Why does the government feel municipalities can address an issue which it itself is unable to deal with effectively? This only creates unacceptable competition between municipalities.

The tourist exemption privilege was originally included in the bill to provide an opportunity for merchants in truly tourist areas to serve those arriving too late for conventional shopping and to provide added revenue in those areas where a short selling season exists. This is a situation we have brought to the attention of the ministry for nearly 10 years. Our position has not changed on this subject. We believe tourist-designated areas should be the responsibility of the Ministry of the Solicitor General.

There are only some 25 to 30 tourist exemption bylaws now in force, some of which are in legitimate tourist areas. To leave this decision with the municipalities only invites the sort of lobbying where one municipality can be coerced into granting a tourist exemption to a mall owner, as opposed to a neighbouring municipality that would have the courage to say no.

The section of Bill 113 which refers to pharmacies eliminates the number of employees and endeavours to exercise control by limiting the square footage to 5,000 square feet. This is a most generous conclusion and certainly is a far greater area than that required for the dispensing of drugs, goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes. This will apply only to the major outlets, and certainly one would be naive to believe that these major outlets would confine these sales to the products mentioned. We believe this subject requires a great deal of study, as to both the number of employees and the size of the premises.

While we agree with subsection 5(1) of Bill 113, which gives the necessary protection to those who do not practise the Christian faith, we are of the opinion that the policing of these alternatives will pose a serious problem.

Section 5a nullifies any lease agreement requiring a retail business to open on a Sunday. There is no question mall owners will apply pressure on individual businesses, which many will find difficult to resist. A good example of this is a men's wear retailer in Calgary. He had operated in a particular mall for some eight years and had spent over \$100,000 on fixtures. He found out that his lease was not renewed because of his decision to remain closed on Sunday. This will undoubtedly be the experience of many retailers.

The increase of the penalty to \$50,000 appears, on the surface, to be a

desirable feature. The facts, however, are substantially different. If a small merchant violates the law, there is no court in the land that would contemplate anything approaching \$50,000. The situation that now applies would take effect and a fine, or a licence to violate, of \$100 to \$500 would be the assessment. Unless the government is prepared to establish a minimum fine, then this becomes a rather meaningless approach. We draw your attention to some 19 violations in the province of Quebec that were heard by the court in July and resulted in fines of \$47,500.

Subsection 8(1) of Bill 113 makes provision for the Attorney General or a municipality to make application to the court for an injunction against an offender. We believe this is a restrictive measure and would prevent the general public from taking part in this procedure. While we support the principle, we do believe it should be enlarged to go beyond the Attorney General and/or a municipality.

The amendments in Bill 114, while well intentioned, nevertheless fail to take into consideration the employee whose livelihood depends upon his holding his position with a company. We have heard of an employee who, if he refused to work on Sundays, would be transferred to a nonpromotable position. This would pose a serious situation, to be adjudicated, if indeed it were possible.

We have addressed our objections to the changes in Bill 113 and Bill 114 and we would like to address the implications of making these bills the responsibility of the municipality. The government has received many communications, all of which voice disapproval of placing the responsibility for the act in the hands of municipalities. These objections have been voiced by the Association of Municipalities of Ontario—total opposition to the plan; letters from the public, businesses and unions expressing equal displeasure; petitions, thousands upon thousands, all expressing disapproval of the proposed action; the London North by-election, a very positive response based on the decision of the government with respect to Sundays; and meetings, probably in excess of 100, where the public has said no.

Open Sundays: We fully appreciate that the government does not believe that a wide-open Sunday will result from its actions. If this is the opinion, then why open up hundreds of opportunities for municipalities to enact tourist bylaws?

We have on many occasions witnessed small municipalities where the councillors are all local business people. There have been many cases where Harry is able to convince the Bills, the Margarets, the Joes, etc., that his business would improve with Sunday opening. Let's be honest that under such circumstances council can easily be persuaded that one opening will not cause any harm. Can you as a government agree that these are honest applications of the tourist exemption?

We have not addressed the problems which many mothers will face if they are forced to work on Sundays. There are many who now work on Saturdays, and if Sundays are added, then quality family time will be virtually an impossibility.

The issue which is before us will infringe on quality family time. A recent survey on the CBC's The Journal indicated that the time is now down to 30 seconds per day for children. We have a chronic shortage of day care centres, which will be increased if working mothers are obliged to work on Sundays. Where will they find any care?

The issue of religious or moral values is one that has always been a concern where there is legislative infringement.

Offences by young offenders have steadily increased, and we are of the opinion that much of this is a direct result of a loss of family time. We realize that people cannot be legislated into church attendance, but we do believe there should never be legislation which removes the opportunity.

The present legislation still contains many loopholes which, in our opinion, can be remedied. Making major municipalities responsible for the administration of this legislation does not necessarily mean wide-open Sundays, but it does make this a greater possibility than with that which now exists. The Retail Business Holidays Act met many of the requirements with respect to Sundays and can be amended to make this a most satisfactory law.

We respectfully request that this committee seriously consider the possible implications of its decision on the future in Ontario.

I have added an editorial taken from the Toronto Star of last Saturday, which I presume most of you have probably seen. The Toronto Star is certainly interested in the very generous revenue that it has been able to derive from advertising, largely from violators, more than from the tourist exemption people. It is rather interesting to see that it has criticized the position of the government and has taken the position that this is a very, very unwise decision. Thank you very much.

Mr. Chairman: Thank you very much. We will now open it up for questions. We have 21 minutes approximately, so it is seven minutes per caucus. Mr. Philip first.

1210

Mr. Philip: I am pleased you had the courage to deal with the subsection 5(1) exemption. So many of us, I guess, have a hesitancy to deal with that because we are fearful that perhaps as Christians we are being discriminatory against someone else.

As someone representing an association which has been involved with this whole issue for a great number of years, would you agree that historically the reason for the religious exemption was to allow small family businesses—which are allowed to discriminate under the Human Rights Code in the case of, say, Jewish or Muslim butcher shops—to remain open because a majority of the people there, probably all of them in the case of the butcher shops, would be of the same religious persuasion and would naturally for religious reasons be closed on Saturday anyway and that it was never intended initially to simply allow people who happened to be of a different religious persuasion to open on a different pause day? Would you agree with that?

Mr. Kingdon: I think the original act, perhaps to a degree, was discriminatory. Things have changed since the act was originally written. We have a very large multicultural population today, and to that extent I think the original act was discriminatory. Subsection 5(1), in my opinion, would clarify that completely. I am not suggesting that subsection 5(1) is going to be an easy thing to do, because we are going to run into too many merchants who will be another Paul Magder and will decide they can open seven days a week. That is why I think the policing of this is going to be a tremendous problem.

Mr. Philip: I guess the problem I get into with subsection 5(1) is the problem that was brought to the select committee's attention by a Jewish businessman, a shoe store owner in Windsor. He said he has 17 employees. Under the Human Rights Code, he is not allowed to ask what religious persuasion they are, and if he were to use the religious exemption under the new act, which is not allowed under the present act because he has more than seven employees, he would be discriminating or forcing his religious practices on a majority of his employees who are not of the Jewish persuasion. Therefore, he said the most sensible thing is to leave the exemption for seven people, small businesses, to allow those Jewish butcher shops and so forth to stay open on Sunday and close on Saturday but not to open it up any more than that. Otherwise, you get into real problems.

At that time, the Solicitor General said, yes, it would open it up to checkerboarding. You have looked at her new bill with section 5, which says the religion of the owner means, "in the case of a partnership, the religion named in a written agreement between the partners which is the religion of one of the partners."

Would you agree that opens it up to simply having a minor partner—A company could go out and simply find someone who would be willing to lend his name, invest as little as \$10 in a company and be therefore a partner in that company—indeed, you can be a partner in a company without any financial investment—and use that to open up on Sunday and checkboard the province with stores across the province open on Sunday this way.

Mr. Kingdon: I think that probably got into the act as a result of the Supreme Court decision with respect to Magder and the Jewish meat store. It was argued there that the Jewish meat market was a totally owned operation of the chap who was defending himself in the case, and the court ruled that in the case of a corporation, there would have to be some identity in so far as religion is concerned.

I do not think what you are suggesting is something that, say, an Eaton's or a Simpsons or a store of that type would do, but some of the smaller ones might well try that.

Mr. Philip: You would agree with me that I as a Christian could, if I wished to remain open on Sunday, violate any laws that might exist or have a loophole as a result of subsection 5(1) by simply finding someone, a Seventh Day Adventist or a Muslim or someone of the Jewish persuasion, and simply make him a partner in my company and list him under clause 5(2)(b) as the partner whose religion we intend to follow.

Mr. Kingdon: Loopholes are always interesting. You can find a loophole for any situation you want.

Mr. Philip: There seem to be an awful lot in this bill.

Mr. Kingdon: I would agree that what you are saying is true, but I do not think in practice it would happen. I would hope not.

Mr. Philip: Certainly, the Solicitor General thought it would happen when she was not Solicitor General. She seems to have changed her mind on this point and on so many other points.

Mrs. Cunningham: It is a pleasure to have you before the committee, Mr. Kingdon. It is wonderful to have people who can speak with some historical

background and a person like yourself who has made a worthy brief based on a lot of your experience and your interest. I appreciate that very much.

I have a couple of questions to do with that. One relates to your observations on the tourist exemption and the other one has to do with your observation on pharmacies.

The tourist exemption privilege, you say, was originally included in the bill to provide an opportunity for merchants and truly tourist areas, and you go on to define that. I would think the discussions around a truly tourist area today would be somewhat different from the discussions you may have experienced, and I would like you to comment on that.

Mr. Kingdon: The tourist area today, properly defined, as I see it, is that where any municipality—as I say, the Margarets, Bills and Joes can come and be convinced by a single individual. We took many, many court actions, some 30 or 40 court actions that cost us a fortune to undertake, and some withdrew the tourist exemption once the action was started.

I think really what we have is a multiplicity of situations where they have been able to justify that they are tourist areas. Somebody mentioned Niagara Falls. Niagara Falls has two tourist exemptions.

On the other hand, it is interesting that there are places such as Peterborough, where last Sunday I looked for a drugstore with great difficulty; places such as Lakefield, where you cannot find a grocery store open on a Sunday; places such as North Bay, which is very, very strongly opposed to tourist exemption and where you cannot find a drugstore open on a Sunday.

While the tourist exemption has changed, I do not think it has changed to the point that it would justify the wide opening of every type of business that you can name.

Mrs. Cunningham: Are there any specific tourist exemptions that come to mind that you are aware of that you disagree with, that you think are flouting the intent, as you see it, of tourist?

Mr. Kingdon: I think most of the tourist exemptions we have been involved in, and we have spoken to most of these, have been really a question of the councils being willing to grant an exemption whether it be a tourist area or not. Therefore, I think most tourist exemptions today, if properly scrutinized, would be disallowed, but the courts have told us very definitely that once the council has before it all the pieces of paper—and there are many—that tell the complete story, they are at liberty to grant a tourist exemption.

Mrs. Cunningham: Then are you telling me that it is because of the evidence presented by the municipalities that support their particular tourist definition or their particular tourist exemption, as they see it, that we are in difficulty with the courts? Is it because of the municipal evidence?

Mr. Kingdon: The normal procedure with a tourist exemption is that, first of all, they get an application from one individual, a ripple effect runs through the community and they get three, four, half a dozen, whatever, petitions and so on, and this finally goes to the municipal council for a hearing. The briefs are the pieces of paper they require to make a decision that it is a tourist area. If they have gone to the trouble of getting all of these, then the municipality will grant the tourist exemption.

1220

A good example is the Hamilton-Wentworth situation where they had a tourist exemption for every municipal road in the province. We challenged it and they repealed the tourist exemption without even going to court. Since then, of course, there has been a great deal of disturbance in Hamilton, but this still holds strong.

Mrs. Cunningham: You are here to make the point very strongly that if the municipalities are given the responsibility of defining the tourist area, in fact we will experience this—

Mr. Kingdon: Many, many more. I think what will happen is that if the municipalities are given this responsibility, one municipality will be approached and you will have the domino effect immediately because the adjoining municipalities will have to do the same thing.

Mrs. Cunningham: You have been most helpful. This government is stating that there is a framework to this legislation and that part of the framework is the common pause day. Do you believe that is the framework of the legislation, the important part of the legislation, that it does indeed support the common pause day?

Mr. Kingdon: I do not think the legislation and the revised Bill 113 really consider Sunday as a common pause day. There are many changes between the original act and Bill 113 which weaken the situation as far as we are concerned.

Mrs. Cunningham: One final question. If approached, if we needed your assistance, either this committee or another committee of government, would you be prepared to help us in the definition of a tourist area?

Mr. Kingdon: Definitely.

Mrs. Cunningham: Thank you very much. I admire the People for Sunday Association of Canada. I think a lot of people in our communities are not aware of the work you do and how much thanks we owe you in your efforts to disallow any expansion of Sunday shopping. I did not know you were as involved with the courts. I appreciate your work very much. Thank you.

Mr. Keyes: Thank you to Mr. Kingdon for the presentation. I think I could say to my colleague Mrs. Cunningham that she will probably find sitting in a committee of the Legislature such as this the most educative process she have been ever been through. It is through this type of process that we begin to find out the large number of people across the province who take a very keen interest in government legislation and are always ready to come forward to lend their views on the issues. That is what is so great about being involved in politics and about the style of democracy we practise here.

Mrs. Cunningham: Not unlike, Mr. Keyes, my experience in London, Ontario, for 14 years, where the best presentations were made by the public. Thank you.

Mr. Chairman: We are not giving you any extra time for this. You had better—

Mrs. Cunningham: I appreciated your comment.

Mr. Philip: Do we get equal time to say we like you too?

Mr. Keyes: Mr. Kingdon, I look at things somewhat differently than colleagues on the other side of the room. Your brief was one which did express some of the logical concerns in certain areas which we should always be concerned about, which I think the legislation is. You have also, in my opinion, as I look at it in a positive frame of mind, been quite supportive because you seem to have pointed to those areas of the bill where we have made amendments. On your final page, you said you are sure the current bill can be amended to make a very satisfactory law. That is exactly the process we are involved in here, with people making representations, probably 100 over the next eight weeks.

We feel the first steps have been taken by trying to tighten up restrictions, enforcement, fines. We have given some details as to how to go about fines as far as gross sales are concerned, which would help to get them. I think you made a valid suggestion that will certainly be considered by the committee; that is to say, it is included. But the one of saying there should perhaps be minimum fines is one that can be looked at, just as we have looked at the suggestion of sizes for pharmacies, the Sabbatarian exemption, leasing requirements, all of these. I looked at them from your point of view, that yes, we have taken some steps to improve what is there.

I am just wondering if you could comment a bit further on the tourist exemption. You said—on page 3, I think it was—that there were some 30 or 40 tourist exemptions. Actually, in our incomplete but fairly thorough research, we have found over 100. Even the Association of Municipalities of Ontario admitted to this. There are about 110 or 120 tourist exemption by-laws across the province. They are scattered quite thoroughly across the whole province. This seems to show that local conditions have dictated to the municipal councils, that they felt there was a need.

Do you feel there is a need to restrict—this is somewhat related to Mrs. Cunningham's question—those that have currently opened? If so, where do you suggest it goes about? We have allowed a lot of opening now on Sundays, for the theatres, sports, etc., through the tourist exemption. It is our opinion that the tourist exemption created a problem, but local people did decide what they would like to see open.

Mr. Kingdon: I do not know whether you are talking about tourist exemptions now in force. It is always difficult to back up.

Mr. Keyes: There are about 110 municipalities that have tourist exemptions.

Mr. Kingdon: I find it difficult to accept that figure, based on my knowledge of this subject. I am not disputing it but I think you will find some of them are perhaps on the books but are not being used at the present time. To suggest that you take from them the privileges they now enjoy, I think, is a very difficult thing to do. I do not want to take a position and say that we agree with you 100 per cent and say, "Yes, let's back them all off and be done with it." They got them in a legitimate manner, and I do not think they can be taken back.

Mr. Keyes: Do you want to make any comment on some of the other, shall I say, liberties that have been granted on Sundays in the past, as to what impact you feel they have? You have talked about the problem of finding drugstores and grocery stores open yourself.

Mr. Kingdon: Let me go back to the Malton fruit market, which is one

that perhaps has caused us more problems and one that I think is a most unfair decision. Initially, we went to court with that and won the first court decision. We felt that this was the court saying, "You've got the evidence and we agree with you," and that was the end of it.

Subsequently, the Malton fruit market appealed the decision and supported it with a very lengthy brief, some 90 to 100 pages, of all the reasons why it should be open. The courts then reversed the decision. We went back to court a third time and fought the question on the brief and the whole issue and again lost the case. Some two years and \$30,000 later, we find a situation where there is absolutely no justification for that store being open on a Sunday. I just cannot describe an area that could be less of a tourist area than that.

Mr. Keyes: Could I just ask one last question, as our time is up? You did seem to support the injunctive powers that we are putting into the bill as well. That does give much more clout to the law. I just was not sure why you felt it should go higher than the Attorney General, whose ministry we consider one of the fairly strong areas of legislation, as far as justice is concerned.

Mr. Kingdon: We have had situations under the federal Lord's Day Act, which was turned down three years ago, where no action could be taken without the permission of the Attorney General of Canada. In some cases—and Alberta is probably the most significant one—where we endeavour to get charges laid and the Attorney General of Canada simply says, "No, I will not give you the permission," it is our feeling that the same thing could happen with the injunction process if the Ontario Attorney General has the final decision in the matter and can say, "No, this is justified," and refuse the right to get an injunction.

Mr. Keyes: I see. In the courts of the land here, I guess we feel that the Attorney General is a very significant power and has reacted to preserve what we want. I want to thank you very much for all presentations and concerns you have raised.

Mr. Chairman: If I could just get clarification, in your brief you indicated that it should be "the Attorney General and/or a municipality." You recognize from the legislation that both of them have the right?

Mr. Kingdon: Right.

Mr. Chairman: You are asking for an enlargement of that?

Mr. Kingdon: That is right.

Mr. Chairman: OK. Thank you very much, Mr. Kingdon. The committee is very appreciative of your coming forward and giving of your time and giving us a very thoughtful brief.

Now, committee members, we have a small item that the clerk would like to bring to your attention and then we will break for lunch.

Clerk of the Committee: There is a change on this afternoon's schedule at 3:30 p.m. when we had Howard Moscoe. His office called this morning. He will still be appearing, but he is now appearing as the chairman of the large urban section of AMO, along with the vice-president and Metro representative of that organization.

Mr. Philip: When do they appear?

Clerk of the Committee: At 3:30 this afternoon.

The second thing is when you are in London next week. On Thursday, August 18, you will notice we sit until 8:40 p.m. There are no flights out of London after 7:45, so we have booked you in for one extra night, to come back either—and this is where I need your decision—at 7 a.m. on a flight Friday morning, or we can come back by bus at 9 a.m. or whenever you like.

Mr. Philip: Fly back.

Clerk of the Committee: In the morning?

Miss Roberts: Can't we come back by bus on Thursday night?

Mr. Keyes: Some can come with me on Thursday night. I will be driving back.

Clerk of the Committee: That would be another alternative, to come back by bus Thursday night.

Mr. Philip: I think we should expect that one of the members of the committee whose house is located in London to throw a party for all of us.

Mrs. Cunningham: Actually, you can help me unpack boxes. There are lots of sleeping spaces and you are all welcome to stay there, save the public money and help me unpack the boxes. Pizza for dinner at nine o'clock. What is new?

Miss Roberts: You are always more than welcome to come to Alliston and stay at the farm.

Mr. Keyes: I will be coming back to Toronto, if anyone wants to come with me.

Interjection: If you stay at the farm, you work seven days a week.

Miss Roberts: That is right.

Mr. Chairman: I don't think we are getting a decision yet.

Mr. Keyes: I have room.

Mr. Chairman: I think we are into chaos.

Mr. Philip: I know that my questions and comments always facilitate the process.

Mr. Chairman: I understand the clerk has taken steps to book.

Clerk of the Committee: I have both booked.

Mr. Chairman: They are both booked.

Clerk of the Committee: All I need is your decision. I have the flight at seven o'clock Friday morning scheduled. I also have the bus ready and waiting. I am going to have to tell one of those two.

Mr. Keyes: Anyone is welcome to come back with me. Ron is booked with myself and I am going to come back on Thursday.

Mr. Hampton: Party, party, party.

Mr. Keyes: If anyone else wants to come with me, I am driving back from London to Toronto.

Mr. Chairman: Maybe you would like to think about that. I think we are having difficulty making a decision. Maybe a little lunch will assist in that process. We will think about it and come up with a decision after lunch. We stand adjourned until two o'clock.

The committee recessed at 12:33 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT
EMPLOYMENT STANDARDS AMENDMENT ACT

WEDNESDAY, AUGUST 10, 1988

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Hart, Christine E. (York East L)

Chiarelli, Robert (Ottawa West L)

Cureatz, Sam L. (Durham East PC)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Keyes, Kenneth A. (Kingston and The Islands L)

Philip, Ed (Etobicoke-Rexdale NDP)

Poole, Dianne (Eglinton L)

Sola, John (Mississauga East L)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Jackson, Cameron (Burlington South PC) for Mr. Cureatz

Pelissero, Harry E. (Lincoln L) for Ms. Poole

Roberts, Marietta L. D. (Elgin L) for Ms. Hart

Clerk: Deller, Deborah

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Solicitor General:

Ritchie, John M., Senior Crown Counsel

From the Canadian Federation of Independent Business:

Andrew, Judith, Director, Provincial Affairs

Bennett, Jim, Vice-President, Legislative Affairs

From the Ontario Federation of Labour:

Davis, Julie, Executive Vice-President

MacDonald, Duncan, Program Co-ordinator

From the Cadillac Fairview Corp. Ltd.:

Harrison, Geoffrey J., Senior Vice-President

From the Association of Municipalities of Ontario:

Moscoe, Howard, Chairman, Large Urban Section; Controller, City of North York

Bradley, Michael, Vice-Chairman, Large Urban Section; Alderman, City of Sarnia

Pilkey, A. C., Executive Member, Large Urban Section; Mayor, City of Oshawa

AFTERNOON SITTING

The committee met at 2:04 p.m. in room 151.

Mr. Chairman: I recognize a quorum. Would the members take their seats, please.

The first delegation we have before us this afternoon is the Canadian Federation of Independent Business, Jim Bennett and Judith Andrew. Perhaps the main presenter would identify for the purposes of Hansard the people appearing.

You have half an hour. You can use all or any part of that half hour for your presentation but it would be desirable if you would leave some time for questions from the members. So, if you would like to proceed.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

Mrs. Andrew: My name is Judith Andrew and I am the director of provincial affairs in Ontario for the Canadian Federation of Independent Business. I am joined by my colleague Jim Bennett, who is the vice-president, legislative affairs, for the federation. If it pleases the committee, I would like to read our statement into the record.

Mr. Chairman: Fine.

Mrs. Andrew: On behalf of CFIB's 38,000 Ontario member firms, we are pleased to comment on the key issue of Sunday shopping regulation. One quarter of our Ontario members operate retail businesses in the province, including eating and drinking places, and an additional two per cent are hotels and other lodging places. Accordingly, our membership accounts for about one fifth of Ontario's 46,600 retail businesses; and that source is from Business Microdata Integration and Analysis, from Statistics Canada.

The retail sector in Ontario is overwhelmingly small: 32,000 or 68 per cent of retail businesses in the province employ fewer than five employees. I would refer the committee to appendix A of our brief, which gives a pie chart showing the distribution of Ontario businesses. In the retail sector, you will see the very large darkened chunk is the portion that represents firms which employ fewer than five employees in the retail sector. As you can see, the largest firms represent only 1.2 per cent of all the retail firms in the province.

Overall, about 553,000 individuals are employed in the retail sector in Ontario. Evidently, the perspective of small business, and especially small business retailers, is of key importance to your committee's deliberations.

CFIB has conducted several surveys which provide guidance on Bill 113 and Bill 114. As you know, our Mandate policy questions are forwarded to our 80,000 member businesses Canada-wide and the majority vote sets policy for the federation. Our questions enjoy about a 25 per cent response rate, and almost half the respondents would draw from the province of Ontario.

In February 1988, the following Mandate question was posed: "Should municipalities have the responsibility of regulating shopping on Sundays and holidays?" You will see the full question attached as appendix C in our brief. The question received the following response: 38 per cent, yes; 55 per cent, no; 4 per cent, undecided, and 3 per cent, no interest in this issue.

Our members were obviously persuaded by the domino argument, which suggests that making such shopping legal in one municipality eventually forces Sunday and holiday shopping to be permitted everywhere. They, of course, would be in the best position to judge whether competitive pressures in a permissive environment would force Sunday openings. All retailers must clearly size up their competition on every competitive aspect, and store hours would be reckoned into the calculation.

An earlier—1983—Mandate vote put 58 per cent of our members against legislation to permit the opening of retail operations on Sundays and holidays, which actually represented a strengthening of our 1978 vote of 52 per cent in favour of restricting retail operators on Sundays and holidays.

Separate surveying in Saskatchewan, New Brunswick and Nova Scotia showed similar overall results, but disaggregating the survey results by sector found retailers over 70 per cent opposed in all three jurisdictions, and also very small and new firms objecting in large proportion.

The small business view, including nonretail, is quite clear: The majority want a clear provincial framework which cannot be overridden by municipalities and which strives to preserve the family and community values inherent in a common pause day. Our members value the tradition of a common pause day which differentiates Ontario from our American neighbours to the south. They assign extra worth to a day off if it coincides with a day most others have off. After all, Monday or Tuesday is of little use to a family if the children are in school.

Our members understand, though, that framework legislation must also take account of the business reality of tourism. Anyone who has ever taken a holiday knows that one day melts into the next and that the vacationer expects the same availability of accommodation, food and beverage, souvenirs and gifts, recreational activities, etc., on Sunday as he would on other days.

Accordingly, we would support Ontario mandating the continuation of an exemption for the accommodation businesses licensed under the authority of the Tourism Act, for hospitality businesses licenced under the Liquor Licence Act and for restaurants. We do not believe that these basic tourist amenities should be subject to the whim of municipal decision-making.

1410

As for tourist areas, the shopping districts currently designated by municipalities, we consider it appropriate for each municipal authority to assess the situation and assign tourist areas under municipal bylaw. While this approach may not provide equitable results in every instance, businesses seeking leave to open for the tourist trade would have the opportunity to make their representations to municipal officials. We are hopeful that each municipal authority would struggle for a workable and fair definition of "tourist area" appropriate to its community.

Bill 113 provides that a provision in a lease agreement requiring a retail business to remain open on Sundays or holidays is of no effect. While we are concerned about the possibility of coercion by shopping centre landlords, for example, we view this item as regulation of merely one element in what is so clearly a one-sided lease agreement favouring landlords.

Independents choosing a shopping centre location usually pay a higher rental per square foot than the chains, which in turn causes proportionately

higher property and business taxes. They must knuckle under to the often oppressive lease terms covering evening hours, advertising, product mix, etc.

It is well understood that independents can be ejected for even small deviations from the lease agreement. It is in this context that the Ontario government hopes to protect the independent from being forced to open on Sundays or holidays. We view this provision in the same light that critics have viewed the companion legislation covering employee protection, Bill 114, as well meaning but ineffective in some circumstances. In short, we do not view lessee protection as an equal tradeoff for the havoc created for small businesses by giving employees the right to refuse Sunday work that they consider unreasonable.

Vital to this debate is the information that nearly half, 47 per cent, of our Ontario retailers complained about shortage of qualified labour in over 2,100 personal interviews conducted from January to June 1988. Many independent retailers may be caught, speaking in the vernacular, between a rock and a hard place if Bill 113 proceeds unamended to allow the domino theory of competitive pressure to force Sunday openings. The major retailing chains have a great advantage over small business retailers in terms of their ability to staff Sunday openings.

Referring again to the table I mentioned earlier showing the distribution of retail businesses by number employed per firm, it is obvious that the majority, 69 per cent, have fewer than five employees to draw on, whereas the large firms have ample human resources, allowing them to easily cover Sunday openings with volunteers.

This regulation will unfairly place small retailers at a disadvantage because they simply will not have the resources to cope. The result will be that the owner-manager and family members will be pressed to work virtually nonstop, unable to take any leisure time whatsoever.

In conclusion, Bill 113 requires major amendment before proceeding. Small business retailers, who account for the majority of retail businesses in the province, are seeking leadership from the province in establishing a clear provincial framework which cannot be overridden by municipalities.

The legislation should clearly establish that accommodation and hospitality businesses are permitted to open on Sundays and holidays. It should provide for local autonomy in designating tourist areas for shopping. In the absence of complaints from our members about the other exemptions currently found in the Retail Business Holidays Act, we would suggest that they be continued under the provincial framework.

We are opposed to the passage of Bill 114 and would sacrifice the modicum of lessee protection if the government were to choose a wise course and drop the idea of extending a right of refusal of Sunday work unreasonably assigned. We are convinced that just as independent retailers weigh the advantages and disadvantages of a shopping centre location, so too do individuals contemplating employment in retail stores.

Also, the shortage of skilled retail staff is such that employees are in a strong bargaining position with regard to their hours assigned. Therefore extending the right of refusal would put small retailers in an even more untenable position.

To our knowledge, no other jurisdiction has attempted to regulate in

this difficult area. Moreover, if the Ontario government establishes a solid framework with a municipal option for tourist areas, the fear of wide-open Sunday shopping will be diminished and the perceived need for employee protection will be much less.

If the government is determined to proceed with ill-defined legislation purporting to provide employee protection, then at the very least the determination of unreasonableness must also take into account the small size of the store. We also believe that the employee should work his or her assigned hours until the determination is made, which would put pressure on the employment standards branch for a speedy resolution of disputes, and also ensure that the small employer is not left in the lurch.

In concert with unions, church groups and others, our members want the province to uphold a common pause day, rather than leaving it to the vagaries of municipal councils. Accordingly, we urge the government to reconsider its approach in Bill 113 and Bill 114 and give the people the provincial framework that they desire.

I will be happy to receive questions.

Mr. Chairman: Thank you very much for your presentation. We have approximately 20 minutes, six and a third each. I have Mr. Philip first.

Mrs. Cunningham: Do you have a pattern going here? I want to be third this time.

Mr. Chairman: I am just recognizing it on the basis of hands.

Mrs. Cunningham: Next time I want to be first.

Mr. Chairman: I am not taking it in any way, shape or form. If you wish to hang in there and be last, go right ahead.

Mr. Philip: Conservatives always argued that the rotation was official opposition first, followed by the third party, followed by government.

Mrs. Cunningham: That was in the old days.

Mr. Kanter: You read my mind.

Mr. Philip: That was in the days when you were the official opposition.

Mrs. Cunningham: You keep going to the past. We are looking to the future.

Mr. Keyes: Not on this bill, you're not.

Mr. Chairman: I am taking it on the basis of the hands as I recognize them.

Mrs. Cunningham: I know. I tried earlier to be third, but the hand thing did not work. Kanter sits there waiting for me to put my hand up every time.

Mr. Chairman: Well, let's get on with it.

Mr. Kanter: I do not call the order.

Mrs. Cunningham: I want to be third.

Mr. Chairman: We have witnesses who are waiting to be heard. This banter between us really is not accomplishing anything.

Mrs. Cunningham: I don't care. I will be second, but I would like to have been third. Next time, we'll see.

Mr. Philip: I do have some questions for you. One of the questions I have is that we have received anecdotal information that in jurisdictions such as British Columbia, which went the municipal route and ended up, of course, in pretty well wide-open shopping except in isolated communities, there was a transfer of business from the small merchants, who usually are not located in the large malls, to the larger chains that in fact can afford the large malls, and from small neighbourhood shopping plazas and independent downtown stores to the large shopping malls. In other words, companies like The Bay received business at the expense of the smaller merchants.

I notice that you do not have any statistical information on this, but do you have any research that would indicate that that pattern in fact occurred; that there was a transfer of merchandising patterns from the smaller operators to the larger operators as a result of Sunday shopping?

Mr. Bennett: We do not have any detailed research. One of the reasons we asked for the 1983 vote was that it was going on in British Columbia. But from five years' worth of anecdotal evidence, what we heard from our members who were in Richmond when Surrey opened was that they were losing volume, and the domino theory did go right through the lower mainland. Because of their geography, the interior and places further up the coast were able to remain isolated. Yes, there was, according to the complaints we got, a transfer from small to large and from certain municipalities to others, until the whole of Vancouver and the lower mainland did open.

Because of the geography of Ontario, we are quite concerned that if a Mississauga or a North York or wherever opens, it will have an impact 50 miles in each direction.

Mr. Philip: OK. What I hear you saying is that there was a pattern of transfer of the available purchasing dollar from small businesses to larger businesses, from small plazas to larger malls and from smaller communities to larger communities. Is that correct?

Mr. Bennett: Not necessarily from smaller communities to larger communities, but from those that were closed to those that were open. They did not all open at once, until the other ones were forced to follow. That pattern basically happened only in the lower mainland. The interior of BC and further up the coast were not affected the same way.

Mr. Philip: Nobody is going to drive 50 miles up a mountain trail in order to shop on a Sunday.

1420

Mr. Bennett: A couple of hundred, yes.

Mr. Philip: We do not have very many mountains to drive up like that, so they might be more willing to travel a greater distance.

Your survey is interesting. Basically, what I read in your survey is that there is very little difference between provinces in those merchants who are opposed to Sunday shopping as compared to those who are in favour.

Mr. Bennett: Basically, we did these at different times in different jurisdictions, but there has consistently been a very strong majority of merchants in each of the provinces involved who were opposed.

Mr. Philip: What was the date of your survey that covered British Columbia?

Mr. Bennett: We asked a Mandate vote in 1983. The February 1988 vote was nationwide.

Mr. Philip: Do you have the nationwide vote broken down by province?

Mrs. Andrew: No, both of those votes are nationwide. The only disaggregation we had was for Saskatchewan, New Brunswick and Nova Scotia, which showed 70 per cent of retailers opposed as compared to our overall membership, which includes nonretail. Therefore, we think it is significant that a majority of all small businesses, no matter what field they are operating in, oppose Sunday shopping. They could just as easily see it as more convenience for themselves as well.

Mr. Philip: We were told by someone yesterday who presented some survey information—we were not able to have that in front of us, and then he used up all of the time, so we also were not able to ask him questions on it, but the indication from him was that somehow in the United States, once people realized it was not a very bad thing, they gradually came around to favouring it.

What I find interesting is that your BC survey would have been taken three years after the Sunday opening, and at that point in time, at least three years afterwards, a large number of communities would have had the experience of Sunday shopping, yet a majority still held as being opposed to it after having had that experience.

Mrs. Andrew: We should be clear. There is not a separate survey for BC. The BC results would be included in that overall Mandate vote and they would contribute something like 15 per cent to that Mandate vote.

Mr. Philip: Have you taken any surveys in British Columbia, Saskatchewan or Alberta before they became open and have you compared those with the results after they have had the experience of Sunday shopping?

Mrs. Andrew: Just in Saskatchewan, before it was opened, and the survey showed 71 per cent of retailers opposed. We have not done a subsequent survey, but we should.

Mr. Philip: It would be interesting if we could have the figures of before and after, to find out whether or not—

Mrs. Andrew: People get used to the idea.

Mr. Philip: —people get used to the idea and whether they are happy with it. I suppose the shoppers might get used to it, but the people who work in the stores and the people who own the stores might not be so happy.

The biggest fear some of the merchants I talked to in my area have is the fear of losing staff. Their claim is that it is often expensive to train staff nowadays, that the retail industry does not have a large percentage in terms of profit on gross and that if you are in a competitive market for labour and the labour can go to a factory and get equal pay and not have to work on Sunday, it will transfer over to the neighbouring factories. Is that a fear that a number of your merchants have, that they may in fact have a fairly large turnover if this comes in, that people will simply go off into other businesses?

Mrs. Andrew: That is very definitely a fear. As we mentioned in our brief, 47 per cent of our members have trouble finding qualified labour for their retail businesses at present. We have these results aggregated by sector. There are other sectors that are even less able than the retail sector to find qualified employees. For example, the construction sector is at 60 per cent at the moment. Manufacturing is at just over 60 per cent, as well. Both of those sectors could easily attract retail employees who objected to working on Sundays and felt they could enter another field.

Mr. Bennett: The other part of the dilemma is that if you have only five employees and you are afraid you are going to lose two of them so you stay closed, you are terrified of losing market share. If you are selling appliances, you know there are going to be only so many VCRs sold in a year. If you are giving up one seventh of the opportunity to service that market, you will lose market share. You are really between a rock and a hard place.

Mr. Philip: Speaking about market share—and this will be my last question—

Mr. Chairman: Could I just draw to your attention that your colleague has asked a question, as well?

Mr. Philip: How many minutes do we have?

Mr. Chairman: You have about a minute and a half left.

Mr. Philip: Then I will ask the question out in the hall.

Mr. Chairman: I do not want to stop you, but I just—

Mr. Philip: I appreciate your telling me that.

Mrs. Cunningham: My questions are going to pursue this issue of not having enough skilled labour.

In your brief, on page 5, you talk about the refusal of Sunday work and "unreasonable." I am wondering if you have had a chance to really look at Bill 114 in detail. I have a question. Would most of your workers be members of unions?

Mrs. Andrew: Our estimate is that about 12 per cent of our membership is unionized.

Mr. Bennett: They would be predominantly in the larger-sized group. If you take someone with fewer than 10 employees, which is almost 70 per cent of the retail workers, they would not be organized. The unions quite often do not bother with organizing drives for those small establishments.

Mrs. Cunningham: The reason I ask is that if there is an argument as to the meaning of the word "reasonable" or "unreasonable," whichever way we want to put it, there are some criteria put out in Bill 114, under section 39k, that a referee would look at. You have asked us to include in those criteria, I believe, the small size of a store, which I think is an extremely helpful suggestion.

I was more concerned about what was missing at the very beginning of this section. The very first item to look at is the terms of a collective agreement that specifically addresses Sunday work, if the employee is a member of a bargaining unit. In my experience, by the very nature of being involved in small retail or any other small business, most people do not have a collective agreement. I thought this bill is really geared towards increasing the number of unions even in small stores—and I would like you to comment on that—by not even mentioning a letter of agreement or terms of agreement or the 10 things you would write down when you hire somebody. I would like you to comment on that.

Mrs. Andrew: I think the way this is written is to be certain that the referee takes account of a collective agreement if there is one. If there is not one, clause 39k(2)(a) would not apply.

I am not sure it is encouraging more unionization. For example, clause 39k(2)(b) suggests that part of the determination would be whether the business was paying time and a half for Sunday work. Most of these little businesses cannot charge their customers price and a half, and they are very strapped when it comes to paying overtime premiums. The suggestion here is that the business would be considered unreasonable if it was not offering that kind of premium pay; that, again, would discriminate against the very small business that was not in a position to do so.

Mr. Bennett: Although there could be, especially in instances of medium-sized firms, the side-effect of promoting unionization, I do not know if it is necessarily intended. This basically shows the bias common to most Ministry of Labour legislation. They think in terms of the Stelcos and the large, organized establishments. When they bring in legislation, it never occurs to them that 70 per cent or 80 per cent of the small, unorganized firms are going to get hit by the tail.

1430

Mrs. Cunningham: I have no problem—

Mr. Chairman: Mrs. Cunningham, I just bring to your attention that your colleague has asked for a brief part of the time, and you now have about two minutes left.

Mrs. Cunningham: I will ask four quick questions. Are you in favour of the local option?

Mrs. Andrew: No. Our members are opposed to local option, except for the tourists' needs.

Mrs. Cunningham: Do you support a common pause day?

Mrs. Andrew: Yes we do, very much so.

Mrs. Cunningham: If we needed your assistance in the definition of

"tourist area," would you be willing to help us, because that seems to be a problem with the present legislation?

Mrs. Andrew: We would help to the best of our ability. There is obviously a need for some guidance to be given to municipalities in terms of how they apply the tourist definition. It is the abuses that gave rise to the debate, I think, that has caused this bill and they need to be addressed, certainly.

Mrs. Cunningham: You are quite right. The last question is: In your opinion does the common pause day form part of the framework of this new legislation? Would you say the common pause day would be part of the solid framework of the new legislation?

Mrs. Andrew: No, it does not, because there is so obviously a municipal option to virtually disregard what is set out in the legislation.

Mrs. Cunningham: Thank you.

Mr. Pelissero: Thank you for your presentation today and for bringing forward the findings of your members. I have a couple of questions around the tourist designation and the local autonomy. Do you think there are other reasons a municipality might want to allow certain facilities to open on Sundays, other than for tourist reasons? I will give you two examples. One is in Sudbury, where they open one day in November for all the individuals who are handicapped, and I guess the other area that we tend to point to is the whole area of Chinatown, which is as much a multicultural issue as a tourist situation. Do you think local municipalities should take into account something other than strictly tourist?

Mrs. Andrew: I suppose they might want to. Our concern is that already very many Ontarians are required to work on Sundays, and we would like to see as much as possible the preservation of a common pause day, but taking into account the business reality of tourism. I would have to have a compelling argument that other reasons might be given. You have given two examples of what municipalities have done but the tourism field is vastly important to Ontario in terms of revenue and jobs created and it is obvious that people do not stop their vacations on Sundays. So that one seems to be very clear cut.

Mr. Pelissero: I am just saying that currently municipalities have used the tourist exemption because it is the only vehicle available to them, whether it is for allowing access one day a year or for whatever period of time and whatever size. That currently is the only access or vehicle that they have available to allow individuals and their municipalities access on certain Sundays.

I am having some difficulty trying to reconcile your position on page 3 in terms of the difference between what you are suggesting and allowing local municipalities to determine what a tourist area is, and what we are proposing in Bill 113 when we talk about the local municipality having the ability to determine, for whatever reason—people have put forward in the past that the tourist areas in some cases have been a facade—to make their decision. I am trying to see where we are different in terms of what you are proposing on page 3 and what the proposed legislation is suggesting.

Mrs. Andrew: I think the proposed legislation is, as you mentioned, to take account of any other reason a municipality might want to open on

Sundays, whereas we are saying the only reason should be a tourist exemption. Probably there should be some guidelines set out so that municipalities can apply that tourist exemption fairly in their areas to try to cut down on the abuses. We know it will not be an equitable result in every case.

Mr. Pelissero: You mentioned on page 5 that in the absence of complaints from other members about other exemptions currently found in the act—and I am referring specifically, say, to drugstores in this particular situation—your position would be to maintain the current perspective in terms of no limit on square footage as long as there was a limit of fewer than four employees.

Mrs. Andrew: I am sorry. That was not clear. We should have mentioned that there are some very good approaches in the new bill that will serve to stem some abuses. Obviously, there is a problem with larger department stores masquerading as drugstores, and the roping off and all of that. We applaud the effort to try to ensure that there is one drugstore available in every community. We are not certain and we cannot give you any guidance as to what size that drugstore should be, but there is certainly an effort there to curtail the abuses in that field.

Mr. Pelissero: So there are some redeeming factors in the ill-defined piece of legislation?

Mrs. Andrew: Yes, there are.

Mr. Pelissero: Thank you.

Mrs. Andrew: I can certainly also tell you that we agree with the proposition to discontinue roping off, generally, and the need to increase fines is probably there to make sure it is not just a modest cost of doing business for someone who decides to violate. We also think the Sabbatarian changes, with their owner focus, are fair enough. But we disagree with the basic premise of the legislation.

Mr. Pelissero: OK. Just in closing, I refer to appendix C on page 9. I have and I do get regularly, thank you very much, your newsletter from the Canadian Federation of Independent Business and all the surveys that go along with it, and I think you do a fairly good job of providing some background information on which you allow your members to make a decision one way or another.

I have a problem with your background information in terms of, "Should municipalities have the responsibility of regulating shopping on Sundays and holidays?"

If I read that question, sitting in Ontario as a retail business operator not knowing the current legislation with respect to the tourist option, that to me says the municipalities currently do not have that ability or that option. I would recommend that you maybe put a sentence or two in there talking about the ability for the municipality for tourist areas, at least in Ontario and, I think, a few other provinces, to designate all, parts, or something as low as a fruit stand to be a designated tourist area, so that it does not convey a false impression to the individuals who are attempting to fill out your ballot.

Mrs. Andrew: We attempt, as best we can in the limited space we have available, to balance our questions fairly and provide good background. We

check them with supporters and opponents on both sides of the issue and they are reviewed very carefully by people outside of the federation, and this is the result you see.

Obviously, there are limitations to asking what is a complex policy issue with many detailed pieces of information attached to it in a small space. We think it captures for most people, and it is clear here, that the question is whether provinces should give to municipalities the option of regulating.

Mr. Pelissero: And my only point—

Mr. Chairman: We are going to have to move on.

Mr. Hampton: On page 2 you say you want, "a clear provincial framework which cannot be overridden by municipalities, and which strives to preserve the common pause day." You say on page 6 that you want "a solid framework." Are you saying the framework in this proposed legislation is not solid and is not clear?

Mrs. Andrew: It is the "overridden" part that it falls down on. The municipalities can override for every reason they think is significant. We are saying that their override should be limited to the tourist exemption, more appropriately defined.

Mr. Hampton: I want to delve into that a bit further. Government has said it is not throwing out the old legislation, it is not throwing out the Retail Business Holidays Act, merely adding some amendments to it that are refining the local option. My view is that there has been a fundamental change of direction, that the existing Retail Business Holidays Act was aimed at preserving a common pause day, partly for community reasons, partly for labour reasons. They are enumerated in the last court case dealing with this, where the Attorney General (Mr. Scott) defended the province. That is how I would see the existing act. Would you agree?

Mrs. Andrew: We agree that there is a fundamental change here.

1440

Mr. Hampton: You do see a fundamental change of direction in this new proposed legislation? The emphasis is not on the common pause day.

Mrs. Andrew: Yes, we do. It does address some of the abuses that we were concerned about but it goes beyond that, in fact, to allow municipalities to do whatever they please at their whim.

Mr. Jackson: Every retail or business group that has come forward has indicated that this bill will have an anti-small-business effect. The thesis they experientially advance is the notion that many of these workers and owners will end up either retiring, getting out of the business or going into the larger chains. They will be absorbed. Do you have any documentation, statistical or otherwise, to uphold that?

Mrs. Andrew: No, we do not. That is very hard to obtain.

Mr. Jackson: There is a significant reduction in new business—that is the other thesis that is being advanced, particularly that this legislation is most harmful to women opening new businesses, given that the challenges of

being a woman in Ontario today are difficult enough. If you are a parent and a businesswoman, they are even more complicated by the legislation.

Do you have any statistics or are you measuring anything with respect to small business and women and access with respect to Sunday shopping and conscious decisions to leave or not start up businesses as a result of surrendering the one or both of the only two days they can be with their children?

Mrs. Andrew: We are certainly aware that women are starting businesses at a much higher rate than men. There is always the prospect of a woman taking into account this kind of competitive pressure to be open on a Sunday into her decision to open a retail business. We are not able to definitively say that that would be the case, but certainly business starts by women are up tremendously. There could be a dampening effect.

Mr. Jackson: Mr. Chairman, I have a question for you. I am done with my questioning with the committee, but I have a question for you.

Mr. Chairman: Let me just thank the deputant first.

Thank you very much for coming forward and bringing your information to us. It is very important, and we appreciate your giving of the time to come and do that. Now I will hear Mr. Jackson's question.

Mr. Jackson: I understand clearly the statement the deputants made on page 6 with respect to the relationship of the employment standards branch. I wondered if during the course of today or tomorrow, we could receive some comment from the ministry with respect to why the current legislation is silent with respect to the waiting time before a filing with the employment standards branch on a matter under dispute under Bill 113.

Second, can we have some comment with respect to the ministry's plans around implementation of this section in terms of its impact? Are we talking about additional civil servants being employed? Are we talking about doing it within the current framework?

Mr. Sola: It has been answered.

Mr. Jackson: It has been answered?

Mr. Chairman: I think it has.

Mr. Jackson: Well then, if I can give more focus to my question, I would ask whether we could get at some point a response from the employment standards branch with a statement made earlier today that current backlogs are in the four- to six-month neighbourhood range and that this legislation would further mitigate that situation. Could we get some comment from the—

Mr. Chairman: Further mitigate?

Mr. Jackson: Well, you know what I am saying.

Mr. Chairman: Exacerbate or aggravate.

Mr. Jackson: It would further aggravate the situation that we currently have. I am not asking for that information this minute, but it is my right as a committee member to serve notice and ask whether you would have the

ministry comment. I notice the ministry representative is taking notes. Perhaps he or you would ensure that we get some comment on those areas at some point.

Mr. Chairman: You want this from the Ministry of Labour, I gather. I thought it was in the opening statement of the Minister of Labour (Mr. Sorbara).

Mr. Jackson: I am sorry?

Mr. Chairman: I thought all that information was provided in the opening statement of the Minister of Labour, which you may have missed because you were not here.

Mr. Jackson: I did.

Mr. Chairman: Perhaps you could check the Hansard. That Hansard is available. If that information is not available, then if the committee concurs with that being made available, it can be made available to you.

Mr. Jackson: Thank you.

Mr. Chairman: We will move on now. The next delegation is the Ontario Federation of Labour. We have Julie Davis, vice-president; Duncan MacDonald and Lorna Moses. Perhaps the main presenter could identify the other people for purposes of Hansard.

You have 30 minutes. We apologize for putting time limits on it, but we have so many people we want to hear from and we want to give everybody an opportunity. So you have 30 minutes. You can use all or any part of that time for your presentation, but we would appreciate it if you would leave some time for questions by members. Perhaps you would like to proceed.

ONTARIO FEDERATION OF LABOUR

Ms. Davis: On my far left is Lorna Moses, who is the executive assistant to the Ontario Federation of Labour. Next to me is Duncan MacDonald, and I am Julie Davis.

We are here today as representatives of the Ontario Federation of Labour. We wish to thank the standing committee on the administration of justice for the opportunity to share with you our views on the issue of Sunday shopping.

When we were preparing this submission, we reviewed the involvement of the Ontario Federation of Labour with this important issue. As early as 1961, delegates to our annual OFL convention debated and endorsed a resolution calling for the provincial government to regulate the hours of retail outlets. Resolutions were dealt with at many conventions, the latest being in 1987. In 1969, we were involved with the ad hoc committee on Sunday retail selling, a broadly based coalition of organizations which met with the then Premier John Robarts.

Over the years we have been active in a number of coalitions, the latest of which is the Coalition Against Open Sunday Shopping in 1988. During this period, we have discussed this issue through convention resolutions. We have also put forward the views of our members on numerous occasions to the provincial government, cabinet ministers, a variety of legislative committees and the Ontario Law Reform Commission.

Member organizations of these various coalitions have also made their views known. Our affiliated unions in the retail industry, the Retail, Wholesale and Department Store Union and the United Food and Commercial Workers, have also made their views known. Individual citizens have made their views known. The issue, we believe, has been dealt with in the courts. Needless to say, there has been public discussion on this issue over the years. Our conclusion is that this issue is known and understood well by members of this committee.

Rather than present a lengthy discussion on this issue, we will attempt to highlight certain aspects of it. The committee will be receiving a more detailed presentation from the United Food and Commercial Workers, which is yet to come, and I understand the Retail, Wholesale and Department Store Union presented yesterday. These unions represent workers in the retail industry, and their firsthand experience will be the basis of their presentations. The OFL is, of course, supportive of their position.

We believe strongly that there is a need for a day of rest, a day of pause, away from the pressures and stress of the workplace and of society in general. These pressures and these stresses are very real. They have a corrosive effect on the lives of workers, their families and society in general.

In a recent decision, the Workers' Compensation Appeals Tribunal ruled that a worker could be eligible for financial compensation because of workplace stress. This WCAT decision may stimulate changes for the better in Ontario workplaces.

This is a problem which neither individuals nor society should ignore. It is not a simple matter to change for the better either the organization of work or the organization of our increasingly urbanized society.

We are not suggesting that Sunday as a day of rest or a day of pause is the panacea for every socioeconomic problem in Ontario in 1988. We are, however, suggesting that, as a society, we acknowledge the importance for workers of time away from stressful situations, time which they can spend with their families, their friends and in personal pursuits. We believe that workers, their families, their friends, their employer and society will all benefit.

Our support for Sunday as a day of rest or a day of pause is based on a purely secular concern for workers and not on the religious belief of some workers or some of our members.

There are several arguments being put forward on why Sunday shopping is needed. The first is the question of convenience. It has been said that Sunday is the only day some people have to shop for necessities. We believe it is difficult to judge how many people would be in this situation. Is this a permanent or a temporary situation? Among all consumer items available in Ontario, what are necessities?

1450

Acknowledging that necessity is often in the eye of the beholder, we would suggest that beyond food, gasoline and medicine, there are very few other items which would qualify. Forgetting to purchase a food item or gasoline some time in the previous week makes its absence on Sunday a bit of an inconvenience, but if the argument is accepted that Sunday is the only day

to purchase consumer items, then the next logical step is to have services in all sectors of society open on Sunday.

A second argument made is that Sunday shopping increases sales and profits. We would question this premise. Most consumers operate within a budget, with limits to their disposable income. They have a limited number of needed purchases. The number of needed purchases does not increase if some of them are purchased on a Sunday. There are some impulse purchases, but this usually results in fewer purchases during the next week or the next month. Employers realize that Sunday shopping only adjusts the date, not the volume of purchases. There are consumers who engage in shopping as entertainment and, to them, Sunday shopping gives them another enjoyable day.

A third argument is that Sunday shopping is needed for the tourist trade. We again would question this premise. Tourists come to Ontario from around the world to experience what our province has to offer. Tourists coming to Ontario, especially from the United States, come and find a clean and safe urban environment, a wide range of activities and a favourable currency exchange rate. These are very strong inducements for visiting.

Tourism, we acknowledge, makes an important contribution to the Ontario economy and a component of this contribution is the shopping done by tourists while in Ontario. Is it credible to suggest that tourists coming to Ontario only have Sunday to shop? If this was ever the case, Canadian and American tour operators have long since rectified the situation.

The level-playing-field mentality which is popular in some circles these days would suggest that Ontario has to open up shopping completely in order to compete for tourists with American states. Without appearing to be too smug, we believe that the appeal of Ontario for tourists goes far beyond shopping hours.

We have a number of concerns related to Bill 113 and Bill 114, introduced by the provincial government in April of this year. As with the discussion on Sunday shopping, the main points and arguments are known already to the members of this committee.

It is our view that in a democracy, political parties develop policies which become known to the public, policies which may be publicly endorsed as a result of an election. When elected, political parties always have a balancing act between what they believe should be done and the public belief of what should be done. Issues are often complex, but government has an obligation to deal with these issues in an honest and forthright manner.

We believe that the local-option approach of allowing municipalities to decide if they want Sunday shopping within their borders is a complete abdication of responsibility on the part of the provincial government. If the provincial government believes Sunday shopping is desirable, then it has the power to implement the necessary legislative changes. If it believes Sunday shopping is not desirable, it also has the power to implement the necessary legislative changes. We believe the approach of local option, which is the one being considered, will result in Sunday shopping.

In 1987, the Association of Municipalities of Ontario voted to reject any proposal which left it up to the municipalities to decide on the question of Sunday shopping. AMO speaks on behalf of 675 of the 832 municipalities in Ontario. Those municipalities realize that if one council opts for Sunday shopping, this action then puts increased pressure on the other communities to

do likewise. Advocates of Sunday shopping will play off one community against another. Over time, municipalities will have little recourse but to go along with Sunday shopping.

A collective agreement gives union members in the retail industry an established procedure for protecting their rights. Workers without a collective agreement have management goodwill and the Employment Standards Act to protect their rights. We have serious concerns over the ability of the proposed amendments to the Employment Standards Act to protect—and we want to put emphasis on the notion of protecting—retail workers who do not wish to work on Sunday. We do not believe these changes will be effective.

The intent of the amendments we found in the statement to the Legislative Assembly on April 14 by the Minister of Labour. To quote from the relevant sections of that statement:

"...employers will be encouraged to work out co-operative arrangements for Sunday work that take into account the interest of those individuals who wish either not to work on Sunday or to keep Sunday work to a minimum. This will be accomplished through the establishment of a right for all retail workers to refuse Sunday work which is, in their view"—emphasis in the original—"unreasonable. The bill will protect workers against reprisals for such refusals.

"The new law will provide a process to help employers and employees resolve disputes over what constitutes unreasonable Sunday work or over allegations of reprisals against employers.

"If no settlement is reached through mediation, the matter will be referred to an independent referee appointed under the Employment Standards Act.

"Mr. Speaker, referees hearing disputes in these matters will be able to weigh a number of factors in reaching a decision about the reasonableness of an employer's approach to scheduling Sunday work. These factors will be set out in the bill and will include such criteria as the existence of premium pay arrangements for Sunday work and the recent history of employment, including any previous requirement to work on Sunday.

"An employee will have the right to refuse Sunday work unless and until a referee decides that the assignment of work is reasonable."

In our humble opinion, we believe it is going to be very difficult for unorganized workers to protect their rights under this legislation. We believe their only protection will be management goodwill. We want to know, is this procedure going to be proactive or reactive? If an employer does not wish to have a "co-operative arrangement," what do the workers do? How do they protect their jobs? Are they going to end up working on Sunday even if, in their view, it is unreasonable?

If a worker complains, what protection does he have from an employer's reprisals? How many independent referees are going to be hired and what will be their background and their experience? What kind of resources are going to be available from the Ministry of Labour to deal with this problem? Will there be a waiting list of cases? Will there be any kind of appeal of the referee's decision? All of these are, to our mind, unanswered questions.

The one positive aspect of the provincial government's approach is to

focus in on the role of the Employment Standards Act. As previously mentioned, it does give unorganized workers some measure of protection. However, we believe that many aspects of the existing Employment Standards Act need improvement. For years, as a federation we have discussed with the government the need to improve this legislation.

The last time the Ontario Federation of Labour formally put forward its amendments was in a presentation to the Minister of Labour on August 5, 1986. Those suggestions are still relevant and still unacted on. Improvements to the Employment Standards Act would be of benefit to a great number of workers across Ontario. This goes beyond the immediate concerns of this committee, but it is needed in Ontario in 1988.

All of which is respectfully submitted on behalf of the officers of the federation.

Mr. Chairman: Thank you very much. We have 18 minutes. Mr. Philip, you have expressed a wish to go first. Six minutes.

Mr. Philip: Six minutes is what I have?

Mr. Chairman: Yes.

Mr. Philip: OK, I will use three and my colleague will use three.

The Minister of Labour calls his bill a labour bill. Yet when I asked him if he could name one union or one group of representatives supporting labour that had endorsed Bill 114, he could not name any. Can you name any union, or even a company association, that in fact endorses it and feels Bill 114 will work?

Ms. Davis: No.

Mr. Philip: The Premier (Mr. Peterson) claims he is against free trade and yet has introduced free trade or continentalist legislation in the trucking industry already. My second and last question is: Is this just one more step that will make us more like the Americans with their weak labour laws, where there is an anything-for-a-buck type of society? Is this a nice complement to the free trade legislation that is being introduced in Ottawa?

Ms. Davis: It certainly seems to buy the level-playing-field mentality that is being promoted by the free trade legislation, so we have serious concerns about how it is undercutting the kinds of gains that labour has made for workers in this province over the years.

Mr. Philip: Thank you, Mr. Chairman.

Mr. Chairman: Since I have seen no other hands, I will go with your colleague.

Mr. Hampton: A couple of the previous speakers this morning from church groups said that, in their view, a lot of our labour legislation, a lot of some of our employment standards legislation has had the aim of giving people, and not just employees but also small business operators, some freedom from the coercion of the marketplace, from economic pressure, from the domino theory. They said that what they see in this legislation is actually a regression, that we are going back to the day when economic pressure really came to bear and that it is going to come to bear on a day we have always thought of as a special day, a community day, a family day.

Would that be your analysis, that this is regressive legislation in terms of people becoming more open to the coercion of the marketplace?

1500

Ms. Davis: Absolutely. We are clearly and totally opposed to any more people having to work on Sunday than is absolutely necessary. It sets up competition and it sets up problems for workers.

There are a whole lot of other questions we have on this. We know that the retail sector is mainly women and that we do not have enough day care in this province right now. What is going to happen on Sundays? The existing day care centres we have are not open on Sundays. We do not have enough now. We are going to have even less after this. What about the problems of getting to work for women workers? What about increased transit? That means more people have to work. Certainly, it is regressive, and it is certainly regressive for women workers.

Mr. Hampton: When she was here a few days ago, the Solicitor General (Mrs. Smith) said that the domino theory, the theory that if you face severe economic pressure over here, or economic competition over here or even just significant economic competition, this will not force other firms in the same market to adjust. She said that is just a myth. I want to ask you as a representative of trade unions, in your bargaining how often do you come across the argument: "Our competitors are doing this. Our competitors have instituted these kinds of working hours or this kind of working arrangement. We have to institute it too"? How often do you face that?

Ms. Davis: Every day at the bargaining table, in almost every situation, whether it is the public sector or the private sector. There is the comparison from one municipality to another municipality, from one industry to another industry, from one sector to another sector. There is no bargaining that goes on without comparison and without reference to what is going on in the other part of the industry or the other part of the sector. If one municipality opens, then the municipality next door is going to feel compelled to open, which means that when the retail stores in Mississauga are open, then the retail stores in Oakville are going to have to open. This is the reality and it is the fact of life. It happens now in other areas of competition. There is no question about it.

Mr. MacDonald: Just following that a little further, then you have the ripple effect that if the retail stores are open, why are all the other kinds of services not open? Why are the banks not open, a human teller where I can get money to spend on Sunday? If I want to go and get liquor or beer, why is that not open? Why can I not go and pay my water bill? There is a certain logic there. Once the door starts to open, where do you close it? Even in your case, will the MPPs formally be in their offices on Sunday? I know everyone would say he is available on Sunday, but there is a certain logic. If some services will be available on Sunday, then what is the argument to have other things closed?

Mr. Hampton: The government says that there really are not monumental changes taking place in this act. It says, "We are not throwing out the old legislation. The name of the act is going to remain the same. We are just going to refine the municipal option a little bit." Yet in my view I think there is a monumental change taking place.

The Retail Business Holidays Act, as it is, and the Attorney General

(Mr. Scott) has said this, is aimed at preserving a common pause day. Even though there is a municipal option, it is a municipal option that is gained with some difficulty. It is not a wide-open field. Yet I find this legislation before us has adopted a totally different direction, even though it may call itself the same bill. I would argue it leaves open so many loopholes that it makes Sunday shopping inevitable and you could even say it encourages it. I wonder if you have any comments on that.

Ms. Davis: We agree with your statement. In fact, we think that what it will do is that for those sectors of the economy that want to be open on Sunday, incredible pressure will be put on municipal governments to do that, pressure that some of them will not be able to resist because the threat will be to take certain industries or certain parts of the economy out of their municipalities if they do not go along with the demand to have Sunday shopping. We think it is more than inevitable; we think it will happen. There is no question about it. Wide-open Sunday shopping will be the result of this.

Mr. Chairman: We are going to have to move on. Mr. Hampton, twice you have indicated the minister said something. I would like you to refer to J-4 of Hansard.

Mr. Hampton: Yes.

Mr. Chairman: I will let you read that yourself, but I think, in fairness to everyone—

Mr. Philip: J-34 or J-4?

Mr. Chairman: J-4. It should perhaps be clear. I think you have used words that refer to domino theory as a "myth." If you read through that, you will perhaps see that it goes a little beyond that. As chairman, I am not going to read it, but I think you should read it and make your own judgement on the next occasion.

Mr. Philip: If I may suggest, if a correction like that were to be asked for, it should come from members of the Liberal Party and not from the chairman.

Mr. Chairman: I think the chair's position, Mr. Philip, is that as a matter of fairness, everybody is treated with fairness. I am just asking you to read it.

Mr. Hampton: I will, and I would like you to read what was said in the minister's same opening statement on page 11, "The fourth myth I want to tackle, Mr. Chairman, is the misconception that the so-called domino effect will immediately grip the province if the legislation is passed."

Mr. Chairman: That is the one I am referring to.

Mr. Hampton: That is right. I questioned the minister on that. I asked her if she thought it was a myth. We had quite a good session about that.

Mr. Chairman: All I am suggesting is that you read it, as a matter of fairness, because twice you have used it and it struck me that perhaps the better thing to do, and I am just encouraging you to do this, would be to read the entire item. In any event, on to Mrs. Cunningham.

Mrs. Cunningham: I apologize for not being here from the very

beginning. I have had an opportunity to look at your brief and I congratulate you on once again making your voice heard on this issue of expanded Sunday shopping. I have a couple of questions with regard to your brief. If you would look at page 8, I am interested in your view, or perhaps on your elaborating on what you have already said, about the difficulty for the unorganized workers. I commend you for putting this in as part of your concern, given that you represent the organized groups. You were perhaps here earlier when I asked about section 39k, so my questions are around your brief, page 8, and section 39k of the legislation.

With the present staffing arrangements, you have said that if you are unorganized, you have a more difficult time—I think, anyway, this is what you said—of making a case and that you depend on management's goodwill. How will this affect the unorganized groups as far as having some kind of clout is concerned? Could you go on and talk about what you have tried to say with the Employment Standards Act and clarify for me your point of view?

Ms. Davis: It will not have any clout. Unorganized workers have no clout. They have no voice. They have very limited legislation that usually has a very long backlog of cases, so it takes a very long time. Even when you use the existing employment standards legislation for other problems, there is usually a backlog and it takes a very long time to get a hearing. By the time you get a hearing, you have usually been fired and are long gone from the premises, so it is not terribly effective, which is why we made reference later on to the fact that we need stronger improvements to the Employment Standards Act.

Mrs. Cunningham: On that same point, in your experience, have you had a lot of problems with cases specifically to do with working on Sundays? Have you needed additional legislation or additional clauses in collective agreements to protect workers who now work on Sundays?

Ms. Davis: Most collective agreements contain a fairly stringent restriction on Sunday work by providing for severe financial penalty for the employer as a way of restricting Sunday work. Double time is quite common now in collective agreements for Sunday work, and the reason for putting in double time is to make it financially nonviable for the employer to have employees work on Sunday. Even in workplaces where Sunday work is necessary, like hospitals, nursing homes and homes for the aged, and some industries like the steel industry where because of the furnaces they have to work around the clock, there is an increasing trend towards a premium paid for Sunday work as a recognition of its undesirability, even though it is recognized that people need to be taken care of and that there are some circumstances where it is unavoidable.

1510

Mrs. Cunningham: So we can learn from people who have worked on Sundays that, yes, we do need collective agreements, and secondly, premium pay is becoming the norm?

Ms. Davis: Right. I would think this legislation is going to set up a very interesting dynamic in this province when nursing home and hospital employees, who have been deemed to be necessary workers by government legislation and who do not have a premium clause in their collective agreement, find that the government has, in its wisdom, deemed that the selling of fridges and stoves on Sunday is worth more money than taking care of our elderly or our sick. One would have to question the wisdom of that kind of logic.

Mrs. Cunningham: I can only add to that that my concern is also for the day care workers, and you have already mentioned your concern there. I thank you for that.

I would like to ask you a couple of questions with regard to the present legislation. It seems to me that one of the main reasons for the difficulty we are having is the lack of a definition for "tourist area." I am not sure what your experience has been there or whether you have given it any thought in the past, but have you ever been asked, since you have been around for a little while and made your voice heard, for the definition?

Ms. Davis: What we have proposed is that the reference in the legislation to "tourist industry" be changed to read "resort areas" and that the uniform legislation allow for very minimal variations for camping and summer cottage areas, and that there be some special provisions made for gasoline stations on highways, for drugstores selling prescriptions, drugs and hygienic or sanitary products, and for fruit and vegetable stalls on roadsides. We have also talked about some protection for mom and pop stores and that kind of thing. That was part of our presentation to the select committee on retail store hours in March 1987. If you do not have a copy, Mr. Chairman, we would be pleased to make copies available for members of your committee.

Mr. Philip: The reason I do not have a copy is that I threw everything away figuring the Premier could not believe it was not an issue.

Mr. Chairman: Have you ceded time?

Mrs. Cunningham: No, I have not.

Mr. MacDonald: I wonder if I could just make a point. Many of those points were first put forward in 1975 when the legislation was being discussed at that time, and they were put again in, I believe, 1981, when the government of the day was reviewing some aspects of the legislation. In effect, we have been saying some of the same things for a number of years.

Mr. Chairman: If you would care to leave a copy of that behind, the clerk would be happy to take it. We are going to have to move on, Mrs. Cunningham.

Mrs. Cunningham: Could I just ask my fourth question?

Mr. Chairman: If I let you ask a fourth question, that would be unfair to the rest of the members.

Mrs. Cunningham: You used up some of the time too, Mr. Chairman, which is not going to help us with the definition.

Mr. Chairman: All right; I will concede that.

Ms. Davis: We are on record with the provision of what we think the legislation should provide and we would be quite prepared to put that forward again.

Mrs. Cunningham: I will leave with you my copy of Hansard where we are told that there will be no more employees hired to take care of the problems with the enforcement of the legislation. That is stated both by the minister and a member of his staff. I will leave this with you so that you can help us keep an eye on that down the road.

Mr. Kanter: I would like to thank Ms. Davis and the members of her group for the brief they have presented. I just have a few questions on the contents of the brief.

My first question starts with a basic premise that there is a need for a day of rest. I guess my question would be, do you see the need for a day of rest only for retail workers? What about people working in nonessential industries, things like auto manufacturing, mining, the 3M plant, the petrochemical industry? If retail workers deserve a special legislated day of rest, would you not work towards the same kind of legislation to require those employees to have a day of rest as well?

Ms. Davis: That is the position we are on record with, that the provincial government have the power to regulate store hours and closings for Sundays and holidays and that there be provincial jurisdiction on this.

Mr. Kanter: What about the nonretail sector? What about communications, journalists, mining, auto assembly, those kinds of things? Is that your position as well?

Ms. Davis: We think there should be legislation. They should be allowed to do that only under very restrictive circumstances that are spelled out in the legislation.

Mr. Kanter: And some of that legislation might include premium pay or things of that nature. Is that your position?

Ms. Davis: I think we prefer to see a common day of rest, period. But if that could not happen, then there would need to be minimum standards for protection.

Mr. Kanter: Have you ever pressed the government to enact such legislation in areas like mining or the auto assembly area, where you represent a great number of workers? Have you pressed the government in that regard?

Ms. Davis: Sunday work is not common in those areas on an ongoing basis.

Mr. Kanter: But it is not prohibited by law in Ontario.

Ms. Davis: No, but it has not been brought to us as a problem.

Mr. Kanter: Let me go on to page 3 of your brief, where you talk about what you consider some of the necessities. I am trying to look at what you say in your brief and also seek your answers to some of the previous speakers. You suggest, "Forgetting to purchase a food item or gasoline some time the previous week makes its absence on Sunday an inconvenience." Are you suggesting you would prefer to shut down gas stations; I guess gas stations not on interprovincial or provincial highways or, say, the convenience stores that are members of chains? Would you shut down those services on Sunday? Would that be your position?

Ms. Davis: Again, we are on record with having positions regarding a certain size of stores and how they would operate and be controlled. What we do not want to see is wide-open Sundays.

Mr. Kanter: Let me be quite specific on the question of, let's say,

convenience stores, which we know are in many neighbourhoods of this city and other cities in Ontario, Mac's and Becker's, just to name a couple, and there are many more. Would it be your position that those types of stores should be shut on Sundays?

Ms. Davis: That was our position in the presentation we made to the government in 1987.

Mr. Kanter: OK. Let me just look at the change from the tourist trade to resort areas. As you probably know, there are about 100 or 125 municipalities that are now open in Ontario, including the greater part of cities like Niagara Falls, Windsor, Sault Ste. Marie, Fort Erie and a number of others. Would the consequence of your recommendation that we change from "tourist trade" to "resort areas" not mean that those areas and many others in Ontario which are now open would have to close on Sundays?

Ms. Davis: It is quite possible that a number of them would, yes.

Mr. Kanter: I appreciate that you have a tremendous amount of experience on the labour side with respect to the Sunday shopping issue in Ontario, and your experience goes back some time. I am just wondering if there are any circumstances or conditions that might permit you or encourage you to change your view on this issue.

I guess the reason I am asking that question is some information we got yesterday from Mr. Danson, who was talking about the experience in Massachusetts and the fact that many groups, including labour, that had opposed Sunday shopping changed their minds, I think it was in 1982 or 1983. I have, for example, a letter under the letterhead of the Massachusetts AFL-CIO urging you to support legislation to repeal the current blue law restrictions on Sunday retail sales in Massachusetts. It is signed by the president of the Committee on Public Education, the United Food and Commercial Workers, the Building and Construction Trades Council and a number of union representatives.

Are there some circumstances in which you, as a representative of the union movement, might be moved to consider being either neutral or perhaps even supportive of Sunday shopping?

Ms. Davis: We are always open to discussing issues and to hear arguments about why things should happen and why things should not happen. We also know that you have had representation, I think it was yesterday, from New Brunswick where they are going back, the other way. They had Sunday shopping and are now moving against it. There are arguments that can be made on both sides. At this point in time and since the point in time when we started to raise this issue, we have yet to have an argument made to us that would persuade us to change our minds. But we do not have closed minds on any issue, Mr. Kanter. We are quite willing to discuss anything at any point in time.

1520

Mr. Kanter: I appreciate that. And nor do we; we certainly have open minds as well.

Let me just make one final comment; it is not really a question.

Mr. Chairman: Very briefly.

Mr. Kanter: It refers to your questions on page 8 about Bill 114,

the labour legislation. I think you put some good questions. I think that some of the questions were perhaps covered in the minister's opening statement, which you may not have had a chance to see. I have discussed the questions with a representative of the Ministry of Labour who is here today, and they would like an opportunity to review the questions to see which of them may have been covered by the minister and where there may be new information they want to elaborate on. We would like to arrange a day, possibly tomorrow if we can work it into our busy schedule, when the representative of the Minister of Labour will come and give these answers. We will work out such a day with our staff and then we will let you know so that you can be present, hear the answers and, if there are any additional questions that flow from those answers, you will be able to respond to them.

I think those are very relevant questions. As I say, some of them may have been answered, but in a forum where you were not present. We would like to try to communicate that information and elaborate on that information as best we can, and we will try to work something out with our staff in that regard.

Mr. MacDonald: I can give you one concrete example of the question, "Will there be a waiting list of cases?" What happened when they established the Workers' Compensation Appeals Tribunal? They created it and then gave it a backlog of cases. That has been a problem for them for a number of years and that is the source of some of the criticisms of that institution, that it was given this backlog of cases on day one. That is a concrete example.

Mr. Chairman: I think that is something on which Mr. Kanter has invited you. Otherwise, we are giving more time to one member than to the other, and I do not think that is fair.

Thank you very much. We appreciate your brief, your information and also your time, more importantly; that you come here and assist us, as do all the people appearing before us.

The next group is the Cadillac Fairview Corp. Inc., Mr. Harrison, senior vice-president, leasing. Would you come forward, Mr. Harrison? Would you just have a seat and identify yourself for the purposes of the record for Hansard? I am not sure if you have been here before, but you have 30 minutes. You can spend all or part of that time in presenting a brief to us. We would appreciate it, though, if you would leave some time for questions by members of the committee.

CADILLAC FAIRVIEW CORP. LTD.

Mr. Harrison: For the record, my name is Geoffrey Harrison. I am senior vice-president of Cadillac Fairview Corp.

Members of the committee, I am very happy to have the opportunity to address you today on Cadillac Fairview's perspective on the subject of Sunday shopping. Cadillac Fairview has been outspoken in its views on the subject and consistent in its expression, so I will be brief in my formal comments in order to allow sufficient time for any questions you may wish to pose.

First, we have been steadfast in maintaining that Sunday shopping is a consumer-driven issue, and accordingly, the consumer should be given the opportunity to exercise his freedom of choice; second, that the current Retail Business Holidays Act is discriminatory and laxly enforced; and third, that there is an underlying demand for Sunday shopping, and it manifests itself in three principal categories.

First, work and leisure cycles are changing, and demographic trends reflect an increasing proportion of dual-income families whose work schedules preclude substantial retail shopping except on Friday evenings and weekends. The distribution of retail sales reflects this, as Friday and Saturday purchases represent 50 per cent or more of the total sales volumes of some shopping centres.

Second, shift work alters shopping patterns, as schedules impose a certain irregularity to routines, particularly in the case of families in which one wage earner is on shift work and the other is on a regular Monday-to-Friday schedule. In this instance, even Saturday family shopping would be hampered some portion of the time.

Third, Sunday shopping represents a substantial increase in shopping opportunities. Recognizing that shopping intensity peaks on weekends, when most non-shift-workers and families are free to shop, the addition of Sunday represents more than just one seventh of the potential feasible shopping time through the week. The addition of Sunday indeed to the weekly shopping opportunities improves significantly the match between families' available shopping hours and the facility opening hours. In a nutshell, I guess that is convenience.

Fourthly, retail shopping is a major if not dominant component of tourism. It is especially important to out-of-province tourists and visitors to Ontario, as most come from jurisdictions where Sunday shopping is the norm. Offering appropriate shopping facilities is essential to attracting and retaining a particular locale's tourist industry. In economic terms, retail shopping opportunities not only are essential to the tourism infrastructure, but also are the most effective and efficient means of attracting and extracting the benefits of tourism.

We support this government's initiative in introducing the Retail Business Holidays Amendment Act, 1988, together with the Employment Standards Amendment Act, 1988.

The former act, we believe, will work to bring back into line the inequity that exists in the current legislation, as well as eliminate the flagrant violations of the act which are most evident upon examination of the advertising content of certain Sunday newspapers.

The latter act addresses that specific area of concern which throughout the Sunday shopping issue has been raised repeatedly by those opposed to the concept of Sunday shopping, and that, namely, is the rights and remedies available to employees.

That is my brief. I will be happy to entertain any questions.

Mr. Philip: I certainly appreciate this brief. I appreciate it more than you can possibly imagine because I think it is very important for people to know who is backing the Liberal legislation. We have seen who is against it, and it is good to see who the friends are of the present Liberal government.

Have you done a survey of your own employees as to how they feel about this legislation?

Mr. Harrison: No. We have not.

Mr. Philip: Would it surprise you if I told you that I have spoken to one fairly senior person in your corporation who says that it is total nonsense and that a majority of the people in that corporation, if they had to work on Sunday, would be opposed to it.

Mr. Harrison: You would have to substantiate that. I have no evidence.

Mr. Philip: If I substantiated it, I suspect he would be under the same pressure that some employees would be under with Bill 114 if they tried to refuse to work on Sunday.

Have you surveyed any of the stores that lease from you?

Mr. Harrison: Yes, we have surveyed a representation of national and independents. This goes back many years from the days of us putting forward our position with respect to the Toronto Eaton Centre under the tourist exemption designation application. We had a representation of both national, regional-size retail chains, as well as mom-and-pop independent operators, and the majority were in favour of opening on Sunday.

Mr. Philip: You are saying that, of the people who are in your malls, a majority are in favour of those malls being open on Sunday.

Mr. Harrison: The owners and principals are in favour.

Mr. Philip: I would certainly like to see those figures because I can tell you that you are the owners of the Woodbine Centre, and the largest number of petitions that I have received from any group in Rexdale have come from the Woodbine Centre. Those merchants are 99 per cent opposed to your position and to this bill.

1530

Mr. Harrison: If I may, Mr. Philip—

Mr. Philip: Maybe they feel less intimidated by my survey than by yours.

Interjections.

Mr. Harrison: With all due respect, I might suggest that those on the petition are not the owners and principals of the stores who make the decisions.

Mr. Philip: I think you will find that at the Woodbine Centre, with the exception of the chains, that a large number of those stores, the principals are in those stores. That is not true—

Mr. Harrison: Again, you make a statement and I have no evidence—

Mr. Philip: That is not true of the chains that are in there.

Would you agree that in your lease agreement that you will obtain a higher profit because your rent is based not just on square footage but also as a percentage of gross? Is that correct?

Mr. Harrison: That is correct.

Mr. Philip: Are you aware that a number of merchants in malls in western Canada have expressed grave concern because, while the gross of malls go up as a result of Sunday shopping, in fact, their profits have not been adequate to pay for the extra compensation, which goes entirely, in their opinion, to the mall owners because you are not taking a percentage of profits; you are taking a percentage of gross. The gross does not compensate for the extra day that they have to remain open. Are you aware that is happening in the West Edmonton Mall?

Mr. Harrison: I will acknowledge that is the case in certain instances. I would also like to comment that minimum rent, which each tenants pays, the occupancy costs, which each tenant pays, are based on a per-square-foot rate per annum. They are paying rent and occupancy 365 days a year, 24 hours a day. The issue you raise, I suggest, is somewhat subjective. In fact, they are paying rent, as I say, 24 hours a day, 365 days a year.

Mr. Philip: But if the volume goes up in the mall as a result of Sunday shopping, and we have indications from the west that volumes in the large malls do go up, but that volume is not sufficient to pay the difference in rent, which they are going to have to pay because part of the rent is based on gross, would you not agree that the only winner in that situation is the mall owner and not the shopkeeper?

Mr. Harrison: No, because it is not as simple as saying you pay a minimum rent, plus you pay a percentage of sales. You do not pay a percentage of sales until your minimum rent has been exceeded in terms of sales volume. It is not like paying \$25 a square foot and additionally six per cent or seven per cent of sales. You have to take the percentage rent factor, divide it into the annual minimum rent number to arrive at an annual gross revenue sales breakthrough. Once your sales exceed that level, then you start paying the percentage factor. It is not a both. It is an either/or.

Mr. Philip: But it is always the higher. The higher one of the two.

Mr. Harrison: Once the percentage factor achieves the minimum rent.

Mr. Philip: What percentage of the merchants in your malls would not succeed in obtaining a large enough volume to pay more than the minimum rent?

Mr. Harrison: That question is rather difficult to answer. It would depend on the vintage of the lease. If a lease had been recently renewed, the minimum rent level that would have been established for the particular premises would be such that it is quite conceivable that through the term of that lease, the tenant's sales would not exceed the new annual sales breakthrough point based on the new minimum rent level. As I say, it would depend strictly on the vintage of the lease.

Mr. Philip: I am sure that anyone who on the long-term basis at the end of the lease was not paying more than the minimum, they would suddenly find that there was someone new who wanted to rent that space or wanted to have some other way of—

Mr. Harrison: Obviously if they are not paying a percentage is the end of a long term, then they obviously are not a very productive tenant. What I am saying is, if a lease had been entered into within relatively recent history, the minimum rent level would be such that it would not be unrealistic that at the end of that new term—and I might add the terms for leases are becoming shorter; they are not 20-year terms or 15-year terms; they are 10

years and less—it is conceivable that at the end of that period the tenant would not have exceeded the annual sales breakthrough figure because its minimum rent level had been established at a very high rate.

Mr. Philip: You have not given me any figures. Would you at least agree that some of the people in western Canada who are tenants of your large malls in fact—

Mr. Chairman: Mr. Philip, I am sorry to interrupt you. That is perhaps something you can ask—

Mr. Harrison: I have already acknowledged that may be the case in certain instances.

Mr. Philip: OK.

Mrs. Cunningham: Thank you, Mr. Harrison, for appearing before the committee today. We do not share the same point of view on expanded Sunday shopping, but I still admire you for coming and trying to help us as we deliberate with this troublesome legislation.

As I looked at your brief and listened to you, I wondered why you did not refer to employees. You did not talk about the employees in these stores, as to their desire to work on Sunday or any problems that you may have in your business with employees working on Sundays. I wondered why you did not refer to that at all, or would you like to now?

Mr. Harrison: I guess indirectly my reference is on page 3, point 5, where I say we support the initiative on both the amended pieces of legislation. As I started off by saying, we have always been of the position that it is a consumer-based issue whether we open on Sunday or not. We are there. We build shopping centres, just like other developers build shopping centres, to service the consumer. Retailers rent space within our malls for that same purpose. They hire retail employees to run those stores for the purpose of serving the consumer. I feel the Employment Standards Amendment Act satisfactorily addresses the concerns vis-à-vis the employees.

Mrs. Cunningham: Do you have any malls, or are you planning to open any malls or do any business in London, Ontario?

Mr. Harrison: We have two shopping centres in London, Masonville Place in the north end and a small centre called Huron Marketplace.

Mrs. Cunningham: I am aware of both of them. Does it worry you that that municipality does not intend to open on Sundays?

Mr. Harrison: I would not say it worries us. All we are saying is we perceive that there is a requirement on the part of the consumer to have the option of being able to shop on Sunday and somebody should be able to give him a choice to exercise that option.

Mrs. Cunningham: That would not be of concern to you as you look at future developments? I mean you would not necessarily look at a municipality that is open on Sundays as opposed to closed on Sundays as to where you may want to do business?

Mr. Harrison: No, the criteria on determining where we might next entertain a development would go much beyond whether or not we would be able

to do business on a Sunday, such as competition in the market and the requirements of the marketplace.

Mrs. Cunningham: Even though this is a consumer-driven issue, and you have been consistent in that, whether a municipality is open on Sunday or not does not really impact on that as far as your business is concerned?

Mr. Harrison: That would not be one of the principal criteria in determining whether or not to build a shopping centre in a particular locale.

Mrs. Cunningham: OK. I am happy to hear that. Do you believe in a common day of pause?

Mr. Harrison: I believe in a pause day, but I do not think we have such a thing as a common pause day even right now. We have a day where a majority of people pause, but we have already heard, and I am sure you have heard and will hear over the next session of meetings, that there are hundreds of thousands of employees in Ontario who work on Sunday.

Mrs. Cunningham: Your premise then is that we do not have a pause day now and therefore—

Mr. Harrison: We do not have a common pause day.

Mrs. Cunningham: —a common pause day now. Do you feel that Bill 113, and Bill 114 as part of the framework of that bill, is supportive of a common pause day?

1540

Mr. Harrison: Indirectly it is. It tries to recognize what the reality of the situation is today. There is a common day when a majority of people are off, but it is not a common pause day relative to every single employee in Ontario. As I say, there are hundreds of thousands of people, unionized and nonunionized, who do work on Sunday.

In the event that retail employees end up coming in to the Sunday workforce, people should not be treated any differently; whether they are service sector employees, retail sector employees or union workers, employees are employees and they should be treated equally.

Mrs. Cunningham: The definition of a common pause day seems to be a day that family can be together. That is the definition we have been using. Do you believe in the local option?

Mr. Harrison: In so far as the municipal option certainly goes a long way in improving, again, the current situation, which as I have already pointed out is discriminatory, unequitable, inconsistent and unenforceable. In terms of turning things over to the municipality and invoking the local option, certainly I feel and the company feels that is a much better position to take than what we presently have. In that respect, yes, we would support it.

Mrs. Cunningham: The real problem for the present government, it says, is that it is not able to define a tourist area. Have you given that any thought in your work and in the sort of needs assessment you do in opening up your business? Could you define a tourist area?

Mr. Harrison: If I may be permitted perhaps a light-hearted response

to that question, a tourist area would be the Toronto Eaton Centre. That is the definition of a tourist area. Unfortunately, it is not designated as such.

However, on the serious side. Today I could not give you a specific definition but in general terms, any facility or area that is essential to the enhancement, maintenance or development of a locale's tourist area.

Mrs. Cunningham: You do have some experience, obviously. Would you be willing to help us in that definition if that becomes the issue for this committee?

Mr. Harrison: I would be delighted.

Mrs. Cunningham: I got one yes out of you, anyway.

Mr. Chiarelli: I have a question and I believe Mr. Keyes and Miss Roberts will have subsequent questions.

I am interested in your thoughts on the domino effect. If I can use an example, we have a provincial framework in this legislation so that the regional municipality of Ottawa-Carleton, for example, could decide to do nothing and the large malls, in effect, would remain closed. Would your company build a \$20-million, \$30-million or \$40-million plaza outside a region such as Ottawa-Carleton because a smaller municipality or an adjoining municipality will permit Sunday openings, knowing that the next municipal council could very well close you down on a Sunday? Would you make that kind of investment as a shopping centre developer?

Mr. Harrison: If I can perhaps answer that in a little different fashion, using Ottawa-Carleton. We own a centre called St. Laurent Shopping Centre in Ottawa. Fortunately or unfortunately, depending on which side of the fence you are on, we are not permitted to conduct business other than Thursday and Friday nights. Competitive shopping centres within other municipalities within the Ottawa-Carleton area are permitted to conduct business five nights a week. Notwithstanding that point, we are proceeding with a \$90-million expansion and renovation to the St. Laurent Shopping Centre which will begin later this year.

If you wish to extrapolate that with respect to making a major capital commitment in a municipality where we are currently at a disadvantage, where we are not treated on the same basis because of the particular municipal regulation vis-à-vis five nights a week of shopping versus two, and extrapolate that to your question on Sunday, then I would say other criteria, as I answered once earlier, would have a much more important role to play in the final decision.

Mr. Chiarelli: To what extent would it be significant that a municipality outside of Ottawa-Carleton would come to you and say, "We are going to permit Sunday openings"? Would that be a very significant factor knowing that two and a half or three years after making your \$20-million, \$30-million or \$40-million investment that they could close you down on that Sunday?

Mr. Harrison: Whether that was a factor or how much of a factor it was would depend on all the other criteria: the demographics of the particular market, the existing competition within the market and the potential trade area that this centre could draw to.

If a municipality phoned us up and said, "We are going to be giving an entire area a tourist designation. You can conduct business on Sunday. You have got this wonderful 50-acre site and we want to build a shopping centre," in the decision to proceed or not, there would be much greater involvement in the criteria of deciding yes or no than whether we could do business on Sunday.

Mr. Chiarelli: It would not be the sole factor or the main factor?

Mr. Harrison: Not at all.

Mr. Keyes: Mr. Philip has left but a lot of people have talked about how there would not be increased sales if there were Sunday shopping. I think I heard Mr. Philip say in his preamble to your question that sales go up and they are increased. He is not here to clarify that but that is what I heard from him.

A lot has been made, however, in all of these presentations about the actions that will be taken against store owners through their leases. I want to comment and look at that for a while today. A lot of people have suggested in numerous briefs that owners of shopping centres, such as yourselves, would coerce and penalize any merchant who had chosen during the term of his current lease to refuse Sunday opening once this legislation comes into effect because he will be protected, and that you would find methods of seeing that his lease was not renewed.

I want to put you on the record as to what the stand of Cadillac Fairview is with regard to renewal of leases and the factors that are taken into consideration, and just what part this would play in renewal of leases, keeping in mind that the legislation we anticipate may pass will provide protection for merchants within centres that they will not have to be open.

Mr. Harrison: I will perhaps cite historical information from British Columbia and Alberta, both of which enjoy Sunday shopping, and two provinces in which we have a number of shopping centres.

When the right to open on Sunday first came in in both provinces, the decision on whether a retail store would open was solely the decision of the individual retailer. We advised them that the mall doors would be open, there would be security, cleaning and maintenance staff on site that day and that it was now legal to conduct business on Sunday. If they wished to open for business, so be it. Again, it was their decision.

Initially, I guess probably something in the neighbourhood of 75 per cent to 80 per cent of the stores opened for business. Those were primarily national with a few independents. The other 20 per cent, within the ensuing two months, simply because of the volume of business and the level of traffic that the centres were enjoying, jumped on the bandwagon.

That example happened at Pacific Centre, which is located in downtown Vancouver. It has happened in Tillicum Mall, which we operate in Victoria. It has happened in Bonnie Doon Shopping Centre in Edmonton and at North Hill Shopping Centre and Market Mall in Calgary. In all those centres over the past three years we have conducted lease renewals and there have been no tenants I am aware of who have not been renewed because they did not open on Sunday. There are tenants who do not get renewed because they have not proven to be productive tenants.

Mr. Jackson: Define "productive."

Mr. Harrison: Productive is the level of sales they generate on these premises.

Mr. Jackson: That is what I thought it meant.

Mr. Harrison: I do not know what else it means.

Mr. Chairman: I wonder if we could have these comments through the chair. Mr. Keyes has the floor, Mr. Jackson.

Mr. Jackson: It would be helpful, by clarifying the word "productive"—

Mr. Chairman: You have had your opportunity, Mr. Jackson.

Mr. Jackson: No, I have not had my opportunity.

Mr. Chairman: Yes. You had your full time equally and as fairly as every member of each caucus. Mr. Keyes now has the floor.

Mr. Keyes: Do you wish to continue with the answer to that one? All of them have been renewed? What about the experience in the other provinces? I understand that renewal usually comes on the basis of meeting the commitments set down in the original lease, and if they are met, they continue to renew.

Mr. Harrison: That the tenant has paid its rent diligently, reported its sales, that, again, it is productive relative to the sales generated to the centre and by its particular merchandise category. If a tenant has not conformed in those areas, it is in the centre's best interest and certainly the landlord's best interest to replace a nonproductive tenant with one who is productive.

Mr. Keyes: You see no problem, then, with Bill 113, which provides that protection to the owner who does not want to—

Mr. Harrison: No.

Mr. Keyes: While you are directly connected with it, could you comment on the right we are also giving under Bill 114 to the worker in any of those particular stores and perhaps reflect on the experience in those provinces where you have centres which have had Sunday shopping: the right of an employee not to work unreasonable hours.

Mr. Harrison: To be perfectly frank, I have not been that close with respect to store employees but I am not aware, through discussions either with our own shopping centre staff or through discussions with head office representatives, whether it be Dylex or the Grafton-Fraser group, of any specific employee-related concerns relative to being forced or not forced to work on Sunday.

Mr. Chairman: Thank you very much. Mr. Keyes's time is up. We appreciate your coming forward to share your information with us.

Mr. Jackson: I do not have a question for the deputant, but I have a request for information which I would put through you.

Mr. Chairman: Let me just thank the deputant, Mr. Jackson.

Mr. Jackson: No. He has to confirm that he can provide the information you are about to ask him for. That is why I framed it as a point of privilege, Mr. Chairman.

Mr. Chairman: I do not think it is a point of privilege, Mr. Jackson.

Mr. Jackson: If you wish to dismiss the deputant and then ask him back, that is your business.

Mr. Chairman: I am sure any information we can get from these people who have given of their time would be appreciated and if you wish to ask, go right ahead. I am concerned; I also want to see that the people who are waiting behind this deputant are not kept from being heard as closely as possible.

Mr. Jackson: Alderman Moscoe is quite used to being held up by verbose politicians.

Mr. Moscoe: We do not mind.

Mr. Chairman: You may not, but there may be other people who, in the future, will be held up.

Mr. Jackson: May I simply ask you a question, Mr. Chairman?

Mr. Chairman: Yes.

Mr. Jackson: Would it be possible at any time for us to receive copies of leases from Cadillac Fairview or Cambridge Shopping Centres? I have been in the lease business. I understand they are very complicated leases and I would certainly block out the name of the company and so on. But could we examine the structure of these leases, which has been raised on several occasions?

Mr. Chairman: Would you be prepared to provide that?

Mr. Harrison: If we are speaking specifically of the conduct-of-business section, which deals with when stores shall operate and when they shall not operate, that is fine. To provide you with our standard lease form, as a matter of our corporate policy, we could not. I do not see what benefit a review of a 44-page lease document is going to have for you, when the real essence of what I think you are after is contained in one paragraph, and that is conduct of business. That says the tenant shall operate its business from the leased premises during such times as the landlord from time to time determines.

Mr. Chairman: I gather the answer to your question, Mr. Jackson, is no, in other words.

Mr. Jackson: He asked the point of clarification and then he would provide the lease. If he wants to know what elements of it I wished, I would like to explain to you, Mr. Chairman, why I am requesting the lease.

Mr. Chairman: I think you have asked for it, and my understanding from the witness is that one part of it would be made available, but not the entirety of the 44 pages.

Mr. Harrison: That is correct. I would be happy to provide a copy of the conduct-of-business section.

Mr. Chairman: If that is what you wish, he will provide it. Otherwise, the answer is no. I cannot help you with that. It is not my lease. It belongs to the witness.

Mr. Jackson: I am making a request for information, and we are seeking clarification here. If you could facilitate it, I would appreciate it. I am simply trying to get at the point that a thesis has been advanced that tenants have options to go into or not go into a Sunday-opening experience within a mall. We have been told that there would be no penalties for businesses that do not. We have heard clearly that the structure of the lease provides a specific penalty, which is a catch 22 in and of itself, which will force a lessee out of a mall because it does not open on Sunday, and the lease is structured in order to do that. That did not come out during this hearing, but it will come out upon evidence of examination of a lease. I would like to have a look at one of those leases.

Mr. Chairman: You are asserting something. I do not know whether that is correct or not. The witness is in control of the corporate lease. The witness has indicated he is prepared to provide a certain portion of it but not the full lease, and I think it is the witness's right to do that. Witnesses come before us voluntarily and give of their time voluntarily. We do not bring them here by subpoena, so you have the answer from the witness. I do not think you are going to get any better answer from me, because I do not control the lease.

Mr. Jackson: I apologize. The Solicitor General had assured us that this would not force tenant-lessees out of their malls. This committee is doing an investigation. I understood we had an actual assignment to do some investigation and report. If, in some way, we are inhibited in our capacity to examine in these areas, I am pleased if you rule in such a fashion, but I believe there is something here worth investigating by this committee.

Perhaps we could check with legal counsel in the Ministry of the Solicitor General about this element of leases in general and leave it up to the Solicitor General to find ways of acquiring a copy and determining whether or not that is the effect, because that, I understand, is what we have been assigned to examine on behalf of the Legislature.

Mr. Chairman: The witness, as I say, has come forward voluntarily.

Mr. Jackson: I understand that, and I thank him.

Mr. Chairman: The witness has indicated that for corporate reasons—that is what he states—the lease will not be made available to us. If there are other methods of obtaining that, fine, but at the moment I cannot think of any that we have within the terms of reference.

Mr. Jackson: We can subpoena information. We have done that before. There is a warrant.

Mr. Harrison: May I just say one other thing with respect to Mr. Jackson's question? If you are asking whether there is something specific in our lease form that speaks to the Sunday subject, such as "If it becomes legal to open Sunday, you will open Sunday"—is that what you are suggesting or requesting? That would then help me understand how reviewing a 44-page document when one paragraph deals with what I think you are talking about—maybe I could then understand what you are getting at.

Mr. Jackson: Within the lease, with a substantive number of clauses, there is a financial structure.

Mr. Pelissero: Is this a questioning or a researching?

Mr. Jackson: The chairman has not ruled the question—

Mr. Chairman: I have already ruled that the document is in the possession of the witness.

Mr. Jackson: He wants to be co-operative.

Mr. Chairman: You have asked the witness for the document. Perhaps if you can make it clear, the easiest way and the way to get on with the other witnesses would be for you to clarify privately what you desire. If the witness is prepared to make that available, fine, but I can see no point in continuing to carry on with this witness, perhaps not getting on with the additional witnesses. If you want to do that, fine, we will leave it at that. That is my ruling.

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Mr. Philip: Mr. Chairman, on a point of order: I wonder if it would assist—

Mr. Chairman: It was not a point of order. Are you raising a point of order now?

Mr. Philip: It is a legitimate point of order. The point of order is that this committee is designed to try to find out information which is relevant. Mr. Jackson is asking for some information, and I think we have a legitimate way of exploring ways in which, perhaps, we can obtain information without subpoenas and without using that kind of thing which will be acceptable to both Mr. Jackson and to the witness.

I wonder if this would be possible. Would it be possible to allow a subcommittee, with Mr. Jackson being one of the members, to review a lease form in camera, not taking copies of it? At that point, Mr. Jackson might decide whether it would be of any relevance for us to have any, all or part of that lease? Would that be acceptable?

Mr. Harrison: I would, again, have to understand exactly what Mr. Jackson expects to extract from that document.

Mr. Chairman: Mr. Philip, I think we are going to leave it at the ruling I made, that if Mr. Jackson wishes to speak with the witness privately and clarify what he desires and if it is available, fine. If it is not available, as I say, it is the property of the witness. The witness is here voluntarily. If there are other methods, I will look at those. I will take those under advisement and look at them, but we are not getting anywhere at this point, so we are going to move on.

Thank you very much. We appreciate your coming. If you wish to have a discussion with Mr. Jackson, you can do so.

Mr. Philip: Mr. Chairman, I wonder if, prior to the next witness, considering who the next witness is, it might be a good idea to have a 10-minute recess, at which time any Liberal member who wishes might adjourn to

the Mowat Block and obtain a blood transfusion as a precaution before the next witness testifies.

Interjections.

Mr. Chairman: The next delegation before us is Mr. Moscoe. I understand there is a change in the lineup. He is appearing as chairman of the Large Urban Municipality Association. Michael Bradley is the vice-chairman of the Large Urban Municipality Association; and Mayor Pilkey of Oshawa. Would you gentlemen be good enough to come forward, have a seat and identify yourself for purposes of Hansard.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

Mr. Moscoe: Thank you, Mr. Chairman. A slight correction: It is the Association of Municipalities of Ontario, large urban section. We represent 33 cities in Ontario with greater than 50,000 in population.

Mr. Chairman: All right, and would you identify the people with you, Mr. Moscoe.

Mr. Moscoe: Yes. Alderman Michael Bradley, who will be the incoming chairman in about a month of the large urban section and is an alderman in Sarnia; Mayor Alan Pilkey, who is the mayor of the city of Oshawa. He will be making a presentation on behalf of the city of Oshawa at a later time. In addition, we have with us today Randy Hodge, who is a policy analyst with AMO.

Mr. Chairman: If that gentleman is going to say anything, he should come up to the table. If he is not, it is fine; he stays where he is.

Mr. Moscoe: I think it is quite satisfactory—

Mr. Chairman: You have heard that you have 30 minutes. You can use all of that or any part of it for your presentation. We would appreciate it, though, if you leave time for members of the committee to ask questions.

Mr. Moscoe: We do not have a written presentation, and I hope we are going to make our remarks fairly brief.

Perhaps at the outset I should say, just to clear the decks, that I do not consider shopping on Sunday to be particularly evil as an activity in itself—I must confess to once having bought a package of gum in a cigar store on Sunday—and I will just determine that the act of spending money is sometimes pleasurable and the act of making money is, in fact, pleasurable as well. As we clear the decks on that side, perhaps we can get into our presentation.

Frankly, we are quite angry. We are angry as municipalities because, in fact, you have attempted to foist this bill on us, and I think the credibility of this government is on the line. We were quite pleased when, initially, the new government of Ontario came to AMO and said: "We want to open a new era of co-operation with you. We want to discuss our problems and see if we can resolve those problems together."

In fact, for a period of a year or a year and a half, on many issues that is exactly what happened. We felt warm and comfortable about the relationship the Association of Municipalities of Ontario had established with this government. Then suddenly, for what reason we know not, the state of the world changed, and the change centred around this particular issue.

In fact, we felt rather comfortable about this issue as well. An all-party committee had toured the province. It made recommendations, and clearly all parties were against open Sunday shopping. The Solicitor General had risen in the House and made statements clearly in opposition to open Sunday shopping. Then suddenly one day Premier Ezrin woke up and decided that the state of the world would change and that we would have open Sunday shopping. It was done without any consultation whatsoever with the Association of Municipalities of Ontario. It was a nefarious act that foisted or attempted to foist on us a political hot potato. You do not have the courage to deal with the issue yourselves, so you are attempting to foist it onto municipalities, and we are angry and we are resentful.

Sure, there has been a lot of discussion after the fact, but clearly, why is this committee sitting? Why are we here when, in fact, the minister herself has made the following statement in one of the Toronto newspapers, the Toronto press, and indeed, to our members at the large urban section annual meeting in North York. She says that the local option clause is strictly non-negotiable, regardless of what the all-party standing committee on administration of justice decides. So you would have us come here cap in hand to discuss this issue with us when we know it is non-negotiable, and frankly, we think this whole process is a sham and this is theatre of the absurd. It is just as absurd as this particular location is.

Let me point out an absurdity in your government's position. A keystone of your government's position against free trade, the anti-free-trade position, is that it would damage Canadian culture, and yet you are prepared to have Mr. Danson come before you yesterday and say that we are just the same as Massachusetts. I want to tell you that clearly Sunday shopping is an American idea. It has taken root in the United States; it was given birth in there, and there it grows. So you might as well hoist the Stars and Stripes above this building and call us the 52nd state, because in fact Sunday shopping will bring about a major change in Ontario. We do not like it and we do not like what you are doing to us.

In fact, it took this government only two years to develop the kind of arrogance that it took the previous government 44 years to develop, all around this one issue, the issue of Sunday shopping. This act is a fraud.

I want to tell you that this legislation is far worse, in our opinion, than the old legislation ever was or could be, because when Cadillac Fairview came before the city of North York or Metropolitan council to say, "Designate us a tourist area," we could laugh them out of the council chamber. We can say: "We do not deem you to be a tourist area. Goodbye." When a supermarket came before North York council to say, "Designate us a tourist area," we could say: "Come on, guys. You are not really a tourist area." But this act opens the door to every rinky-dink cigar store to come forward before municipal councils to plead to be open on Sunday.

We thought that one of our major functions was zoning applications, of which we deal with 10 or 15 in each council meeting, and now you want us to deal with 10 or 15 applications to open on Sunday. Under this legislation, any business, for whatever reason, or any area, for whatever reason, or any classification of business, for whatever reason, can come before a municipal council and it does not even have to pretend to be a tourist area. That is why this legislation is flawed.

AMO has told you: "We will sit down with you. We will work out any minor flaws that may have occurred in the previous legislation, because we believe

they are minor." Yet you have refused to listen, you refuse to co-operate with us. Then the minister says, "This legislation or the local option is non-negotiable." So why are you holding these hearings? Do you hope to accomplish anything out of this?

I have heard a lot of talk about factors such as multiculturalism. Councillor Kanter—I am sorry—Mr. Kanter mentioned multiculturalism and Chinatown.

Mr. Kanter: Freudian slip.

Mr. Moscoe: Baloney. It is multicommercialism. The only reason Chinatown got a designation is that, number one, they convinced Metro council they deserved a tourist designation, and we gave it to them. If it were multiculturalism, every group in Metropolitan Toronto could come forward and say, "We are multicultural; designate us tourist," but they have not.

I appeared in Mississauga one day, as Mr. Sola well knows. Mayor McCallion had her annual town meeting, or her periodic town meeting, where she invites all the ratepayer organizations to discuss the issue of Sunday shopping. Clearly, the message was—and I hope Mr. Sola was listening to his constituents—"We don't want it." I have heard this line from Liberal members: "We really weren't in favour of open Sunday shopping, but now this bill has come in and everything is A-OK. Don't worry. This is not open Sunday shopping. We're going to call this Sunday closing legislation." Presto, everything is OK.

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I want to tell you that is a sham, that is doubletalk. This is open-Sunday legislation, and you want to tell me that the residents of Mississauga should make a decision as to whether or not the residents of Etobicoke should have open-Sunday shopping? If Kitchener adopts open-Sunday shopping, how long do you expect it will be before Waterloo has to do it, and perhaps Cambridge behind it? The domino theory is not a myth. It may be a myth in southeast Asia, but if ever it was not a myth, it certainly is not in Ontario.

I do not want to get into a lot about labour legislation and so on, but you should be aware of one thing, because I discussed this with the mayor's office in Kenora. Right now, in Kenora there are two supermarkets. One of them is a Safeway store. The Kenora and Dryden union in the Safeway store is on strike. One of the central issues in that strike is Sunday shopping. The position of the management initially was Sunday could be part of the regular work week, i.e., Sunday would count as one of the five days of work and would be mandatory if scheduled. That was the opening position of the management.

Now, that position is currently modified a little bit. That is not the relevant point. The point I am making is, this is the tip of the iceberg in Ontario. You are going to create dissension in every city and town of Ontario, in every major centre of Ontario with this legislation, not only labour dissension, but dissension whereby citizens come in to battle citizens on every single Sunday opening. Frankly, we want no part of it. If you want open Sunday shopping, then have the guts to do it yourself and do not try to foist it on the municipalities.

Mr. Bradley: It is a great position to be in to follow Mr. Moscoe.

Mr. Philip: If only North York had a mayor like that.

Mr. Bradley: Some day. I think it is important, though, to stress that what Mr. Moscoe says is a common thread across this province. I represent the city of Sarnia and I will be becoming the chairman of the large urban sector in a few weeks. The damage to the relationship between our group and the province, I think, is quite severe. We will make decisions. Many of you have been municipal councillors. You know that at any given council meeting you must make tough decisions.

If the local option is not changed, we will live with that particular requirement, but I can assure you that if this decision goes forward, in two or three years, when the impact is felt through the different constituencies across this province, it will not be the municipal councillors who will face the heat, it will be individual MPPs and where they stood on the issue when the bill was voted on in the Legislature.

I mentioned to you that I represent the city of Sarnia. We are a prime example of the domino theory. We are a separated city, surrounded by the county of Lambton, with an adjacent town of 10,000 called Clearwater. In Clearwater, there is a major shopping centre, just as there is in downtown Sarnia. We have had a number of Ontario Municipal Board hearings on problems between the two centres. We have had a number of ongoing boundary disputes that have occurred in that area.

There is no question in the minds of local citizens that if one of those jurisdictions decides that it must bring about the local option, the other will be forced to. There will be further impact, for example, if Masonville Place in London opens on Sundays as a regional shopping centre; it will have impact on Sarnia. To deny that the domino theory exists I find almost incredible.

The third thing I wanted to address, which I heard from the previous speaker, was the impact on tourism. I represent a border city, a tourism area and a shift-working town; we have all the combinations that I have heard were the prime reasons for bringing about Sunday shopping from Cadillac Fairview. I would like to quote to you from a brief I received this morning from the Sarnia and District Chamber of Commerce, the prime leader when it comes to tourism in Sarnia-Lambton. The brief says, if I can quote you just two sentences:

"Some have argued that being a border city would offer clear advantages to the retailers of our area. The problem with that argument is that we cannot seem to find a retailer that supports it. Additionally, there is clear evidence that unless the value of the dollar drops significantly to produce an exchange rate of 30 per cent to 40 per cent, there is not enough of a savings for the US visitor to go to the efforts of shopping here with any consistency, their claim being, 'We get 20 per cent on the dollar if we're lucky, and your prices are 25 per cent higher, so where is the bargain?'"

The myth of tourism and an enhancement on a long-term basis and on a consistent basis is exactly that, it is a myth.

I will just sum up by saying that I hope that the government members of this committee who seem predisposed to follow through on this particular proposed legislation will rethink their position on the basis of what could work. Right now the status quo works in Sarnia-Lambton. We have four small municipalities. There are tourist centres, including Grand Bend and Point Edward, and they are working. The larger municipalities do not object. We think the status quo could have been clarified and cleaned up and the system

could have continued to work. I hope that you will rethink your position when the legislation comes forward.

Mr. Moscoe: Finally, in conclusion, I would like to say to you as a politician to politicians, particularly the Liberal members, you have our great sympathy. You are having to try to advance a position that is weak, but a position that according to the polls is now clearly unpopular, notwithstanding what Mr. Danson tried to do in terms of dismissing the Gallup poll yesterday.

Clearly you are having to cover up for a Solicitor General who does not really believe in this legislation, even though she is fronting it for the Premier. You have our sympathy. Certainly you will have to deal with your electorate at home base on this particular issue increasingly over the next year or so. So, while we are angry, we do feel very sorry for you.

Our message on this legislation is to be wise, let it die at this committee and have it buried along with beer and wine in the corner store. We will all forgive you. We can go back to working with you rather than being in this uncomfortable position of having to oppose this legislation. Then finally on this legislation, we would ask you to maybe take it and go stick it in your ear.

Mr. Chairman: Six minutes for each caucus. Mr. Hampton, Mrs. Cunningham and Mr. Kanter.

Mr. Philip: Controller Moscoe, I trust that you will be attending the Sundays-for-family picnic which is being held in North York on Sunday, August 21, at which families can get together and have a picnic before this legislation has an impact.

Mr. Moscoe: I wish Mr. Cordiano or Mr. Polsinelli would feel comfortable at that picnic. I would like them to attend too.

Mr. Philip: I wonder if you can answer this question. There seems to be considerable discrepancy between what the Association of Municipalities of Ontario is saying and what the minister said in her testimony the first day.

You may recall that when Mrs. Cunningham and I asked about what consultation she had with AMO concerning the tourist designation, the minister said: "I met with AMO on this. They refused to discuss any of these issues. Nobody...not any municipality,"—and I assume that meant the large municipalities such as yours—"has proposed a definition of 'tourism'..."

When I asked AMO representatives whether it was true that they at no time refused to meet with the minister, Mr. Hopcroft's answer was, "That is correct." Furthermore, Mrs. Brick later said, "We made our offer to sit down and define "tourism," and on more than one occasion." I am wondering if you can confirm, from your experience with AMO, whether you at any time offered to assist the minister with the definition of "tourism."

Mr. Moscoe: I want to be fair to the minister. Certainly we made that offer to sit down and discuss that with her in the context of the old legislation. But we did make it very clear to her that we were not going to participate in a meaningless exercise of attempting to shuffle the deck chairs on the Titanic over this legislation.

Mr. Philip: Mrs. Smith's chief argument for this legislation is that

the tourist designation just does not work. Did Mrs. Smith at any time approach any of your municipalities and ask for assistance in redefining or in improving the old act so that the tourist designation would be more workable and more enforceable?

Mr. Moscoe: To my knowledge, no.

Mr. Philip: Is that true of all three of you? Mayor Pilkey?

Mr. Pilkey: Yes.

Mr. Chairman: Your colleague had asked for part of that time too.

Mr. Philip: Fine. I will give him part of that time.

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Mr. Hampton: Controller Moscoe, you said—I hope I can paraphrase you accurately—that the real issue here is a political issue; that the government does not have the courage to deal with this politically hot item and therefore is foisting it on the municipalities.

Mr. Moscoe: That is fairly accurate, yes.

Mr. Hampton: The government says, however: "No, no. That is not what's happening. Really, what's happening is that this old law is absolutely unenforceable."

Mr. Moscoe: Well, I have to point to the experience. As a matter of fact, it is my understanding that an all-party committee did adopt the Sunday shopping piece of legislation related to bookstores. In other words, the bookstore owners came forward to all of you and made a good case and you said, "Yes, you have a good case," and the piece of legislation was enacted. That is the way it should operate. It should be the province of Ontario that makes those kinds of decisions, rather than creating situations that pit one municipality against another.

I want to tell you, when a local merchant comes forward to North York to beg for open Sunday shopping on whatever grounds, we are going to have to deal with that, and we are going to have to deal with the next merchant and the next merchant and the next. We are going to have to consider the implications of all those decisions, and it will not be long before open Sunday shopping is a reality. If it were up to the mayor, it would be a reality today. But when he advanced the concept, the people in North York rebelled. The mayor spent the most uncomfortable month of his life in dealing with this open Sunday shopping issue, the same kind of uncomfortable feeling that all of you Liberal members are going to have to feel in your ridings.

Mr. Chairman: You are very close to your time. Do you have something quickly?

Mr. Hampton: I believe you said this act is a fraud. I have a lot of sympathy for what you said. Could you elaborate on why you feel this act is a fraud or is dishonest?

Mr. Moscoe: It is dishonest because the government does not want to deal with the issue of Sunday shopping, so it is passing the political buck to the local municipalities. It is something we do not want, we do not need, we

do not have the time to do; we are too busy doing our jobs, and it is your responsibility. It is the provincial government's responsibility, so deal with it directly and accept the consequences. Don't try to have somebody else do your dirty work.

Mr. Chairman: On that note, we will move on to Mrs. Cunningham.

Mrs. Cunningham: It is a pleasure to have you appear before the committee.

Mr. Moscoe: That is what you said to Cadillac Fairview.

Mrs. Cunningham: Yes, but you have not heard the end of it. Yesterday, I told Hy and Zel's that they were the big bad guys in the eyes of the Solicitor General and I thought that they were big but probably not bad. But I have to tell you, I think you are probably big and bad.

Mr. Moscoe: I am.

Mrs. Cunningham: Yes, I thought so. It really is a pleasure to have almost everyone—do you know why I say that even to Cadillac Fairview? Because I think they gave us as many arguments in their presentation for not adopting Bill 113 and Bill 114. They were really and truly only concerned about shoppers and shopping and not about employees and not about families. That was my interpretation of the thrust of their presentation today. With due respect, I am still happy they came here. Everybody has a right in a democracy, and I am stuck on this committee as the most recently elected person from London North.

Mr. Moscoe: You drew the short straw?

Mrs. Cunningham: Absolutely. I did. The point is that it is because I believe in what I do, and this happened to be the biggest issue in that by-election. I think my being here may make a difference. I do not know.

Mr. Moscoe: I want to tell you that I spoke to Mayor Gosnell yesterday about this and you are quite correct: it was the big issue in your by-election. The mayor says, "Please say ditto for me and I'll meet the committee in London."

Mrs. Cunningham: I am sure he will. I would like to ask you this question. It has been stated by the government that the common pause day is part of the framework of this legislation. Would you agree with that statement?

Mr. Moscoe: No.

Mrs. Cunningham: Are you in favour of a common pause day?

Mr. Moscoe: I believe there should be a common pause day. I do not think it necessarily has to be common to—

Mrs. Cunningham: You have already stated that you have not been asked to assist in the definition of "tourist area." My assumption is that you would be willing to help us if we did ask you?

Mr. Moscoe: AMO will put all of its resources at the government's disposal to assist in helping to refine the definition of "tourist area."

Mrs. Cunningham: This morning, I did detect a different question from the government. In talking informally with one of the members of the committee, that member said the real issue is not the definition so much as who decides what the definition ought to be.

Mr. Moscoe: I think Mac Dunbar pointed out to you that requiring an area to be a tourist area in order to secure an exemption provides a framework, a threshold on which a municipality can make that decision. What this legislation has done is pull that threshold away, so it is open season for everyone.

Mrs. Cunningham: The other area I wanted to pursue somewhat with you is that, as a former school board trustee, I am aware of some of the costs to municipalities of much of the provincial legislation. I am not as aware of the direct costs to municipalities. I wonder if you could fill us in on some of your concerns as municipal councillors with regard to additional costs that we may not have thought of with regard to this legislation.

Mr. Pilkey: There may be a number. If we are open, we are perhaps into additional policing. I do not know whether there will be additional calls for fire departments, but certainly there are refuse pickup and landfill site questions. All of the variety of issues that would be normal to municipalities in a normal work week, Monday to Friday, become present on one more day. I have not yet determined exactly what that added cost factor would be but I am satisfied that it would be an additional cost burden on the municipality and on the taxpayer in general.

By the way, the city of Oshawa has been scheduled to meet with this committee on September 29, I believe, in the morning. We will be presenting to you a formal brief and we will be covering that and other matters that we think will have an impact on municipalities directly.

Mr. Moscoe: The mayor would want you to defer consideration of this whole legislation until we determine where the Metro garbage is going to be dumped.

Mr. Jackson: And market value assessment. Don't forget that one.

Mrs. Cunningham: Thank you very much.

Mr. Chairman: Excuse me. Mr. Moscoe and others, I just want to be sure that Hansard is picking you up.

Mr. Moscoe: Are we not speaking loudly enough?

Mr. Chairman: You are sitting back a bit. I just want to be sure.

Mr. Kanter: It is always a pleasure to hear from Mr. Moscoe. He is always a colourful and amusing speaker, if not perhaps always consistent. I appreciate his rhetoric and I just want to assure him that the reason we are here is to listen very carefully to all of the deputants, whether or not they come up with constructive suggestions, as a number of people have.

We have heard the convenience store owners, for example, talk about a process. They suggested that the old law was very imperfect in that under the old law, you could come before a municipal council with perhaps no notice and no hearing, as some of my former colleagues and Mr. Moscoe's current colleagues did. In Scarborough, for example, they did allow one furniture store to be open, ostensibly as a tourist area—

Mr. Moscoe: Mississauga fruit market.

Mr. Kanter: In Mississauga, a fruit market. I think Mr. Moscoe is familiar with the arguments, so I do not think it is quite accurate—

Mr. Moscoe: Are you disagreeing with the minister?

Mr. Kanter: Mr. Chairman, could you indicate who is speaking at this time?

Mr. Moscoe: I am sorry. I thought you were asking me a question.

Mr. Chairman: Mr. Kanter is asking a question.

Mr. Moscoe: OK, I will wait till the end.

Mr. Chairman: When he gets to the end of that question, you can answer it. Continue, Mr. Kanter.

Mr. Kanter: I think Mr. Moscoe would agree that the current act is not without imperfections, but the question I would ask is whether the new bill, certainly with respect to the provincial framework and the enforcement provisions of that provincial framework, is not considerably stronger in its effect and impact than the old legislation.

Mr. Moscoe: No, my wife is not without her imperfections, but I have not contemplated doing away with her.

Mr. Kanter: Neither would we. We are not repealing the act.

Mr. Moscoe: Do I take it then from your preamble that you are contradicting the minister and saying that in fact local option is negotiable?

Mr. Kanter: What I am suggesting is that members of this committee are here to consider constructive suggestions that will improve this bill in a number of areas. Certainly, one area that the minister very explicitly has stated is open to consideration is the process by which local municipalities can allow Sunday exemptions.

Mr. Moscoe: We are recommending an alternative process.

Mr. Kanter: Municipalities do allow exemptions now. Municipalities will continue to be able to allow exemptions under the proposed bill. We are asking for your suggestions and assistance on a process. Should you feel that would be helpful, we are certainly open to your suggestions in that regard.

Mr. Moscoe: Our suggestions are to scrap this bill and sit down and correct the imperfections in the other act; and again, we do not intend to participate in rearranging the deck chairs on the Titanic.

1630

Mr. Kanter: We have heard that rhetorical flourish before, and perhaps it might be time to develop a new one. You know, some of Mr. Moscoe's protestations of the terrible consequences that this legislation is going to have remind me somewhat of the comments of those who were objecting to Sunday sports and Sunday movies; those who said that Sunday movies would hasten the spread of communism or that—this was the leader of one of the groups—Toronto

would get a seven-day week because it is big and impersonal, and if the trend continued, there would be no difference between Toronto and Moscow. He talks about the tip of the iceberg, and some of his statements may perhaps be a bit overblown.

Interjections.

Mr. Chairman: Could we have one voice at a time here, please?
Hansard has difficulty enough doing it with one voice.

Mr. Moscoe: Is that your question?

Mr. Kanter: No, that is not a question; it is more in the nature of a comment. In keeping with the spirit of Mr. Moscoe's—

Mr. Chairman: Hang on. Let's get back to speaking through the chair. We are not going to have the banter back and forth. Go ahead, Mr. Kanter.

Mr. Kanter: We are dealing with an issue where, quite clearly, there is no consensus. We have had groups like the Ontario Federation of Labour come before us today and say they want a considerably more restricted Sunday: They want to close convenience stores; they want to close gas stations; they want to close tourist areas throughout Ontario. We have had other groups come before us that have said they want wide-open Sunday shopping. We have certainly heard Mr. Danson and others, and I know we will hear others who say they want wide-open Sunday shopping.

I guess the question to Mr. Moscoe is, would you not agree that we have attempted to introduce a bill that recognizes a common pause day but that does allow for diversity in different parts of the province? Would you not agree, Mr. Moscoe, that while it might not have been that difficult for citizens of North York to come down to Queen's Park to change or vary or alter that provincial framework, it is an awful lot easier for the constituents of Kingston or Ottawa or Kenora to go to their city hall and to seek a change in the legislation in their own local community to suit their local community needs, as they have done in Sault Ste. Marie and Windsor and many other parts of this province? Would that not be easier than trying to insist on a provincial framework to suit all parts of this very diverse province?

Mr. Moscoe: No, I do not agree at all, because in fact your local option is a phony option. You are presenting a provincial framework here, and you are going to do it incrementally, bit by bit, town by town, city by city, store by store. I do not agree with you at all. In fact, you have created the conditions for provincial open Sunday shopping, but you have not got the guts to make the decision yourself; you want us to do it for you, incrementally.

I suggest to you, Mr. Kanter, with great respect—and you know I have great respect and affection for you personally, since I did have a seat next to you on Metro council for a long period of time—that if you do not understand the distinction between sport and shopping, then you perhaps should consider going into some other line of work.

Mr. Chairman: You have about two more minutes, Mr. Kanter.

Mr. Kanter: You know, we talk about the domino effect and Mr. Moscoe has talked about the domino effect throughout the province, but I would point out that certainly it was my experience while on Metro council that there continued to be differences within Metro itself. Gas stations, for example,

service stations were open in North York on Sundays—indeed, 24 hours a day; they were shut down in the city of Toronto.

There were many, many examples of businesses' hours of commerce during the week, in some cases within Metro and in some cases in nearby communities, which municipalities now regulate. They were in some cases legally permitted to be open 24 hours a day in the city of Toronto, and yet, first of all, all the stores within those municipalities within Toronto did not necessarily take advantage of it, and certainly stores in other municipalities did not necessarily fight for it. I think the evidence, as opposed to the opinions and the rhetoric, shows that the domino effect did not take place even within Metro Toronto, much less between Metro Toronto and surrounding communities.

Mr. Moscoe: With respect, you are trying to make a distinction that perhaps is not a fair comparison. When we talk about gas stations and so on, each municipality listened to various reasons for doing what it did. But we are talking about a fundamental change in the lifestyle of this province. We are not talking about the opening of a gas station or about minutia. We are talking about a fundamental basic change in the rhythm of life in Ontario. It is something we are very uncomfortable about. You have a right to make that change, but don't ask us to make it. That is our message to you.

Mr. Chairman: Thank you very much. I know one of our members got castigated for thanking you, but I do thank you for coming forward.

Mr. Moscoe: Thank you for your patience.

Mr. Chairman: Sometimes at the end of the day a spirited presentation will wake us all up.

Just before we adjourn, the material that has been placed before you is all of the material that was provided to us by Mr. Danson. The reason it is a little bit thinner than it looked is that it has been printed on both sides, just so you do not think it has been cut down. Is there anything further?

Clerk of the Committee: You still have not given me a decision about Monday.

Mr. Chairman: That is right, yes. It was a decision we left that I suggested might be made better after we had lunch.

Clerk of the Committee: I am going to try to make it easier for you now. Is there anyone who is going to be coming back on the bus, who would prefer to come back on the bus?

Mrs. Cunningham: At night?

Clerk of the Committee: Either at night or the next morning.

Interjections.

Clerk of the Committee: No problem. I will let the bus go.

Mr. Kanter: Can I raise another procedural matter after you finish?

Mr. Chairman: Just a second. Were there any further items? I thought we had another one.

Mr. Keyes: Just on this decision, I said earlier this morning that I would be travelling by car. I believe Mr. Sola and Mr. Kanter both indicated they will travel with me coming back from London on Thursday night, so when you start reserving your numbers for that plane on Friday morning—

Clerk of the Committee: What I will do is just get all the tickets, because we can return the tickets afterwards. You see, the easier thing to do is to return the airline tickets, not cash in the bus.

Mr. Kanter: The OFL did raise a number of questions about labour legislation. As I said, there was someone from the Ministry of Labour here who was monitoring the proceedings and is prepared to reiterate what the minister said or, if there is new information, to bring that new information.

I think it would be helpful for the entire committee to hear that information. They indicated that they could come back tomorrow. I realize our schedule is quite busy. On the other hand, it might be helpful if we had that information before we went out on the road.

I was wondering, if the committee would be agreeable, whether we would schedule perhaps an additional half hour in the morning or afternoon so that we could have that presentation by the Ministry of Labour.

Mrs. Cunningham: Is the presentation by the Minister of Labour?

Mr. Kanter: By the Ministry of Labour, by staff.

Mrs. Cunningham: Your staff?

Mr. Kanter: Not my staff but the staff of the Ministry of Labour. Penny Dutton was here monitoring today. I think she or someone else from the ministry would do the presentation.

Mrs. Cunningham: I just have one point on people coming back, which I have not discussed with anyone. I am not worried so much about staff because we are getting information hopefully that is extremely objective. I think if we open it up to other presenters coming back, I mean anybody, we are going to get ourselves in some difficulty, even with Mr. Danson, I hate to say.

Mr. Chairman: The only reason we made that was that the committee agreed that it wanted an opportunity to examine the material before he was questioned further on it. I was quite prepared, as you recall, to have him back that afternoon. I think I asked the committee that. I think Mr. Philip and the others asked that they have the time to examine the material, which makes sense. So I agree with you that that is not fair to the other presenters.

Mrs. Cunningham: Personally, I have not checked with my colleague, but I do not need him to come back at all. I have read it. If I have any questions, I will phone him.

Mr. Chairman: The committee has decided to invite him back. It is left up to the clerk as to when we do that. But let us deal with Mr. Kanter's item.

Mrs. Cunningham: Subject to his agenda and ours, by the way.

Mr. Jackson: I have no difficulty. As a matter of fact, I raised several questions and I talked to Ms. Dutton privately as well to clarify. I

thought the statement that there was a four to six months' wait was a significant statement. I am surprised that government members did not pursue that, but I certainly did. To the extent that it is or is not true, that should be clarified for this committee, so I fully support that.

Second, I was not able to ask the OFL questions but I would be more than comfortable asking the ministry questions about whether certain labour groups in this province will be allowed to jump the queue, as it were, with respect to limited resources within the employment standards branch.

There are some significant questions which, I see from Hansard, were not raised when the Minister of Labour staff was here. But Ms. Dutton, who I know quite well, having being a former employer of hers, will be most thorough and efficient.

Mr. Chairman: So the long and short of it is that you are in agreement.

Mr. Jackson: Absolutely.

Mr. Philip: I am in agreement with one modification, that is, that it seems to me it would be useful to have the Hansard just for the OFL presentation before—

Mr. Kanter: Actually, most of them really stuck fairly closely to their brief on that section.

Mr. Philip: But there were questions asked by members and clarification.

Mr. Kanter: If we can have it in time, but I think most of the questions were pretty—

Mr. Philip: I think I have a solution: If the Ministry of Labour staff were to come after the presentations tomorrow, by that time, I know our clerk could ask that Hansard pay attention to the Instant Hansard just for that one part of the day and see if we could get the Instant Hansard. It might help us in our questioning of the minister's staff. So I would propose that they be scheduled for the—

Mr. Chairman: The clerk indicates that there should not be a problem in that regard. With that addition, do we have unanimous consent that that is the way we will proceed?

Mr. Jackson: No. We have some difficulties with the end of the day.

Mrs. Cunningham: What about lunchtime?

Mr. Chairman: I think if there is any difficulty, it is probably a question of the Hansard.

Mr. Jackson: Mr. Chairman, the third party would not be able to have a representative here past four o'clock tomorrow. I cannot make it any clearer than that.

Clerk of the Committee: I can only do my best to get the Instant Hansard for the OFL—

Mr. Jackson: Neither member will be present past four o'clock.

Mr. Kanter: How about 1:30? Would that be acceptable?

Mr. Jackson: Yes, as long as we are not still here at 12:30.

Mr. Chairman: That is subject to being able to get the Instant Hansard. Can we do it this way, Mr. Philip? You have raised the question of the Instant Hansard. We seem to have agreement that we would have a staff member here. We will try and have the Instant Hansard available. If it is not, then we proceed at 1:30. Is that agreeable to everyone? All right. We stand adjourned until ten o'clock tomorrow morning.

I want to thank you again. Even though we had the inspirational message from Mr. Moscoe that sort of got us a little out of control, I appreciate your co-operation. If we continue, we should be able to accommodate all the witnesses. Thank you.

The committee adjourned at 4:43 p.m.

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